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ABSTRACT

This publication presents the final regulations to the Carl D. Perkins Vocational and Applied Technology Education Act of 1990. The first section is an analysis of the regulations. This analysis compares the proposed regulations to the final version and explains the differences between the two and the potential impact on program administration. The analysis of the proposed regulations is in the left column; the analysis of the final regulations is in the right column. The 23 major regulatory issues analyzed are as follows: evaluation; services to special populations; prioritizing program areas or sites; full participation of special populations; definition of "coherent sequence of courses"; definition of "local education authority"; responsibilities of sex equity coordinator; nonsupplant provision; distribution of funds; State Job Training Coordinating Council and State Council on Vocational Education review and comments; state activities subject to local requirements; constitutionality of equity program for women; examples of funding priorities; equitable participation of special populations; equipment restrictions; consortia arrangements; allocation to area schools; alternative postsecondary formula; consumer and homemaking administrative costs; technical assistance; incentives for special populations; reporting requirements; and independence of state councils. The second section is comprised of the final regulations, Department of Education analysis of comments and changes, and reporting requirements. A complete index to the regulations is appended. (YLB)

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The Carl D. Perkins Vocational and Applied Technology Education Act of 1990

CE 062 081

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The Carl D. Perkins Vocational and Applied Technology Education Act of 1990

The Final Regulations

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Introduction

The American Vocational Association is pleased to present the final regulations to the Carl D. Perkins Vocational and Applied Technology Education Act of 1990. The AVA Board of Directors is committed to providing vocational-technical educators with the most accurate, comprehensive and current information possible about the federal law and its impact on the practitioner and local programs.

This publication represents the final document in a series of publications AVA has issued since passage of the new Perkins Act in September 1990. *The AVA Guide to the Carl D. Perkins Vocational and Applied Technology Education Act of 1990*, which was published immediately after the Act was signed into law, has become, we are proud to say, the standard reference in the field. The *AVA Guide* contains the only completely integrated text of the law available. The Guide was updated in March 1992, with technical amendments passed by Congress in 1991 and a new comprehensive subject index allowing "user-friendly" access to the law.

Within days of the publication of the proposed regulations for the Perkins Act in October 1991, AVA released *Regs Review*. This valuable reference contained the complete text of the proposed regulations plus an analysis of key issues to be considered during the comment period. AVA is certain that publication of *Regs Review* was directly responsible for the large number of comments the U.S. Department of Education received on the proposed regulations. These comments helped persuade the Department to alter its position on several critically important issues.

The *Final Regulations to the Carl D. Perkins Vocational and Applied Technology Education Act of 1990* presents the Perkins Act regulations in their final form, but the publication is much more than that. *AVA's Final Regs* offers a complete index to the regulations, allowing the practitioner and researcher easy access to controlling sections of the regulations. This is an important feature since many issues and key words can be found in more than one section of the regulations. In addition, an analysis of the regulations is provided. The AVA analysis compares the proposed regulations to the final and explains the differences between the two and the potential impact on program administration.

While the *AVA Guide* and the *Final Regulations* are destined to become the "dynamic duo" reference sources for the Perkins Act, the *AVA Audit Handbook* has already become the standard "how to" manual for administering Perkins Act funds. The *AVA Audit Handbook* has also been updated to reflect the changes in the regulations and is essential reading to anyone applying for Perkins Act money or preparing for annual audit requirements.

The AVA Board of Directors and Headquarters staff are dedicated to providing information to make it easier for local practitioners to do their jobs. We appreciate your comments and always welcome your suggestions on publications needed in the field and on how we may better serve the vocational-technical education community.

CHBuzzell

Executive Director
American Vocational Association

Acknowledgments

AVA would like to acknowledge the hard work and dedication of the Assistant Secretary for the Office of Vocational and Adult Education, and the regulation writing team for their Herculean effort in producing the final regulations to the Perkins Act.

It is readily apparent to any reader of the final regulations that the U.S. Department of Education very carefully considered all comments it received during the 60-day comment period on the proposed regulations. While not every issue was settled in a manner which pleases all interested parties, the final regulations represent a balance between competing and sometimes conflicting provisions in the law. Most important, wherever possible, the regulations allow flexibility to the State to determine appropriate application of the law to accommodate local concerns and meet Congressional intent.

Analysis of Major Regulatory Issues

The major issues analyzed in this section are numbered from 1 to 23, with the subject of each issue, such as "Evaluation" or "Services to Special Populations," noted. To make it easier for you to use this analysis section, by each numbered issue we have cited the numbers of the proposed regulations (NPRM) and the final regs section(s) involved as well as pertinent sections of the actual Perkins Act. Please note that section numbers in the regs do not correspond to the section numbers of the Perkins Act which they address.

The analysis of the proposed regulations, which appears in the left column, is taken directly from *Regs Review*, published by AVA immediately after the release of the proposed regulations in fall, 1991. The analysis of the final regulations, which appears in the right column, shows how the final regulations differ from the proposed regs regarding the issue being discussed.

The Proposed Regulations

1. Evaluation

NPRM: § 403.191
Perkins Act: §§ 231, 232
(also §§ 115, 115(a), 117, 117(a))

The NPRM requires that each recipient of financial assistance under § 231 of the Act (secondary programs) and § 232 (postsecondary and adult programs) "shall evaluate annually the effectiveness of the recipient's *entire* vocational education program, regardless of which particular projects are assisted with Federal funds."

Thus, any local education agency (LEA), area vocational school or postsecondary institution that receives any basic grant funds must evaluate its *entire* vocational education delivery system, even if the federal share represents a mere fraction of the district's overall budget. For example, a district that targets its federal grant to one program at one site would nonetheless be required to evaluate all of its programs at all of its sites.

Every project or activity, no matter how small, must be evaluated in accord with the performance standards and measures required by § 117 of the Perkins Act. Also, every recipient of Title II Basic Grant funds must evaluate any Tech-Prep or Consumer and Homemaking activities funded under Title III.

The Final Regulations

Final Regulation: 34 C.F.R. § 403.191
Perkins Act: §§ 231 and 232
(also §§ 115, 115(a), 117, and 117(a))

The final regulations require a recipient under the basic grant program to evaluate *only* those particular projects, services and activities assisted by the basic grant (§§ 231 and 232) or special programs under Title III (community-based organizations, consumer and homemaking, comprehensive career guidance and business-labor-education partnerships). They no longer require a recipient to evaluate projects that receive no Federal funds. However, if the State Board determines that a broader evaluation is needed, recipients may be required to evaluate their entire vocational education program, including those projects not supported by Federal funds.

The final regulations also clarify that a recipient may use program funds awarded under the Act to support the cost of evaluations required in § 403.191. The regulations permit the recipient to charge the costs of evaluation to the basic grant or Title III program, as long as the costs are necessary and reasonable. The recipient may reserve funds for evaluation prior to allocating funds to sites or programs.

Finally, the final regulations explicitly state that a recipient may rely on representative samples to conduct evaluations. A recipient may choose, for example, to conduct an evaluation based on a representative sample of students, or of students in a particular grade, or of sites assisted under the Act.

The Proposed Regulations

2. Services to Special Populations

NPRM: § 403.190(b) and § 403.193(e)
Perkins Act: § 118

Section 118 of the Perkins Act requires that each State Board in its state plan shall provide assurances that special populations will be provided equal access to the full range of vocational education programs available to persons who are not members of special populations.

NPRM § 403.190(b) interprets this provision to require that supplementary services be provided to assure equal access for *all* special population students enrolled or planning to enroll in a recipient's *entire* vocational education program, regardless of funding source. However, according to § 403.193(e), recipients are not required to use non-federal funds to pay for such supplementary services unless this requirement is imposed by other applicable laws. Section 403.190(c) then states that recipients must indicate in their local application whether any non-federal funds will be used for this purpose.

The Final Regulations

Final Regulation:
34 C.F.R. § 403.190(b) and § 403.193(e)
Perkins Act: § 118

The final regulations reflect several substantive revisions governing the provision of services to special population students. The regulations define "full participation" as the provision of supplementary and other services required by § 403.190(b) necessary for the special populations to enter a vocational education program. The term, "other services," is now defined as the services required under § 118(c), including: services necessary to enable a student to enter a program; assessment; and guidance and counseling.

Significantly, the final regulations indicate that neither the State nor an eligible recipient is required to use non-Federal funds to pay for these supplementary and other services, unless such expenditures are required by other applicable laws. The State's financial responsibility to serve members of special populations is limited. The Secretary interprets the Act in a manner not to create new civil rights or individual entitlements to particular services.

The regulations implementing the Act do not construe the terminology of the Perkins Act to be synonymous with the terms used in the Civil Rights Acts or State's Methods of Administration (MOA). For example, if an institution received any Federal assistance, then the *entire* institution is covered by the reach of each of the Civil Rights laws. The Secretary does not follow this broad approach in the final Perkins regulations. The recipient's entire vocational education program is not subject to the full participation requirements, but rather only the Federally-funded activities.

In addition, the final regulations do not require that § 118(c) requirements or supplementary services for special populations apply to the Title III Tech Prep Program or Supplementary State Grants Program. This is a substantive change from the proposed regulation.

The Proposed Regulations	The Final Regulations

3. Prioritizing Program Areas or Sites

NPRM: § 403.111(b)
Perkins Act: § 235(b)

Section 235(b) of the Perkins Act requires that recipients "give priority for assistance under this part to sites or programs that serve the highest concentrations of individuals who are members of special populations." NPRM essentially restates this requirement and offers three examples. One example permits a recipient to fund a program area in which the special populations participation rate is *lower* than the overall rate of participation of special populations at the site in order to improve the participation rate in that program area.

Final Regulation: 34 C.F.R. § 403.111(b)
Perkins Act: § 235(b)

The final regulations clarify but do not substantively change the NPRM's provisions as they relate to the prioritizing of sites or program areas under § 235(b) of the Act. The final regulations emphasize that a recipient may give priority to a program area without high concentrations of special populations only if such a program is located at a site where there are high concentrations of special populations. The final regulations also clarify that a recipient may fund all sites or program areas on its priority list if sufficient funding is available. Section 235(b) does not require the recipient to impose a second cut-off point. Under § 235(a), however, a recipient cannot fund all sites or all program areas.

4. Full Participation of Special Populations

The Proposed Regulations

NPRM: § 403.111(a)(2)(i) and § 403.111(a)(3)
Perkins Act: § 235(a) and § 521(38)

Section 235(a) of the Act requires each recipient to use Perkins funds to improve vocational education programs "with the full participation of individuals who are members of special populations." In NPRM § 403.111(a)(2)(i) the Department interprets "full participation" as requiring provision of "the supplementary and other services necessary for them to succeed in vocational education."

NPRM § 403.111(a)(3) goes on to state that only if a recipient provides for full participation of special populations, may the recipient use "Federal funds to serve students who are not members of special populations."

The Final Regulations

Final Regulation: 34 C.F.R. § 403.111(a)(2)(i) and 403.111(a)(3)
Perkins Act: § 235(a) and § 521(38)

The final regulations do not delete the term "other services" as it applies to the full participation of special populations. However, the final regulations do narrow the definition of "other services" to apply only to the § 118(c) activities described at § 403.190(b) of the regulations. In this way, "other services" will now be more narrowly construed to mean (1) assisting students who are members of special populations to enter vocational education programs and fulfill IDEA program transition requirements, (2) assessing the special needs of special population students participating in the State program, (3) providing guidance, counseling and career development activities to special populations, and (4) providing counseling and instructional services to facilitate the transition from school to work for special populations.

The comment analysis section at 57 FR 36836 of the final regulations provide further guidance. A recipient is required to provide alternative outreach and recruitment efforts for the special populations, pursuant to § 240(a)(4) of the Act. Supportive services and "special aids" such as child care and transportation are required by § 240(12)(B) of the Act. Thus, some support services that are not required by the "full participation" provision in § 235(a) are, nonetheless, still required by § 240 of the Act.

The comment analysis section at 57 FR 36827 also clarifies the requirement regarding service to non-special population students. The final regulations simply state at § 403.111(a)(3) that a recipient may use Perkins funds to serve non-special population students if the requirements of § 235 and § 118(c) are met. The comment analysis clarifies this requirement by stating that once an eligible recipient *makes an assurance* to serve members of special populations, the eligible recipient is allowed to use Federal funds *at the same time* for general improvement or to serve non-special populations. This is a fundamental issue that is now resolved.

The Proposed Regulations

The Final Regulations

5. Definition of "Coherent Sequence of Courses"

NPRM: § 400.4(b)
Perkins Act: § 235(c)

The regulation defines "coherent sequence of courses" to include adult training and retraining. But it is not clear if funding for adult training and retraining is limited to a series of courses or if a single course as part of a one-shot, quick start-up program is also eligible for support.

The preamble to NPRM § 400.4(b) does state that the "term would also include a single adult retraining course that encompasses sequential units and that otherwise meets the requirements of the definition."

Final Regulation: 34 C.F.R. § 400.4(b)
Perkins Act: § 235(c)

The final regulations amend the definition of "coherent sequence of courses" to include sequential units encompassed within a single adult training or retraining course. The Secretary recognized that such competency-based adult training and retraining programs are invariably conducted as single courses. This intent was previously expressed in the preamble to the NPRM and has now been codified in § 400.4(b).

6. Definition of "Local Education Agency"

NPRM: § 400.4(b)
Perkins Act: § 231

Although the definition of "local education agency" in this regulation includes a state corrections educational agency, it is not clear from the NPRM how such corrections agencies are to be funded.

Final Regulation: 34 C.F.R. § 400.4(b)
Perkins Act: § 231

The comment analysis section at 57 FR 36832 now clarifies that a State or local corrections agency meets the definition of local educational agency if it has administrative control and direction of a vocational education program. As such, these correction agencies are eligible for funding under § 231 and § 232 if they satisfy the minimum grant amount requirements.

7. Responsibilities of the Sex Equity Coordinator

NPRM: § 403.13(a)(11)
Perkins Act: § 111

One of the 17 functions of the Sex Equity Coordinator is "managing the distribution of funds" under the programs for displaced homemakers and grants to overcome sex bias.

Final Regulation: 34 C.F.R. § 403.13(a)(11)
Perkins Act: § 111

The final regulations do not alter or add to the sex equity coordinator provisions previously established in the NPRM. However, within the final regulations' comments section at 57 FR 36519, the Secretary addresses the range of authority a sex equity coordinator has in managing the displaced homemaker and sex equity program monies. In the comments, the Secretary acknowledges that the sex equity coordinator should have considerable involvement in decisions regarding the sex equity and displaced homemaker programs. However, the Secretary states that this authority should, in no way, diminish the State Board's continuing authority to administer and supervise State vocational education programs. We interpret this caveat to mean that the State Board has final say on the distribution of funds under the equity programs.

8. Non-Supplant Provision

NPRM: § 403.196
Perkins Act: § 516(a)(1)(B)

Section 516(a)(1)(B) of the Perkins Act contains a noteworthy exception to the statutory non-supplant provision. For the first time the legislation permits federal funds to supplant or displace non-federal funds, if those federal funds are used to pay the costs of vocational education services (1) required in a student's individualized education plan (IEP) or (2) necessary to meet the requirements of Section 504 of the Rehabilitation Act (with regard to ensuring equal access to vocational education).

An earlier draft of the NPRM referred to these costs as "excess costs." During further drafting of the NPRM, AVA expressed concern to the Department on the meaning of "excess costs." Did the term refer to the concept of excess costs in the handicap and disadvantaged setaside that had been in place since 1968, but was eliminated in 1990? Or did it refer to the excess costs requirement as in the handicap regulations at 34 C.F.R. § 300.182 through 185? AVA viewed the earlier proposed inclusion of excess costs as a serious step backward.

While the reference to excess costs has been removed, the NPRM has added a new subparagraph (c) to § 403.196 that provides that in order for expenditures to qualify for the exception to the statutory non-supplant provision, such expenditures "must increase the amount of funds that would otherwise be available..."

Final Regulation: 34 C.F.R. § 403.196
Perkins Act: § 516(a)(1)(B)

The final regulations do not change the Department's position on the statutory exclusion to the non-supplant rule in § 516(a)(1)(B) pertaining to the costs of vocational services for handicapped individuals. The regulations state that any supplanted State or local expenditures must increase the amount of funds that would otherwise be available to meet these costs. The comment analysis section at 57 FR 36846 attempts to justify this regulation at § 403.196(c) "because the use of State and local funds for these purposes is *required* in the absence of the Federal vocational education funds." Unfortunately, neither the regulation nor the comment analysis informs the reader what such requirements are.

9. Distribution of Funds

NPRM: § 403.32(b)(4)
Perkins Act: § 113(b)(4)

The NPRM requires the State Plan to describe the estimated distribution of funds "for each institutional level" by subpart of the Act.

Final Regulation: 34 C.F.R. § 403.32(b)(4)
Perkins Act: § 113(b)(4)

The final regulations revise the NPRM provisions to clarify that a State need only estimate the distribution of program funds by "instructional" level, i.e. secondary, post-secondary and adult education levels, and not by "institution" level. Within the final regulations' comments section, the Secretary noted that to have required otherwise would have been unduly burdensome to recipients.

The Proposed Regulations **The Final Regulations**

10. SJTCC and SCOVE Review and Comments

NPRM: § 403.33
Perkins Act: § 113(c)

The Perkins Act does not require a 60-day review and comment period by the State Job Training Coordinating Council (SJTCC) or State Council on Vocational Education (SCOVE) prior to the submission of the State Plan to the Department of Education. While § 113(c) of the Act does mandate a review of State Plan amendments, it does not specify the comment period. The NPRM requires a 60-day formal review by the SJTCC and SCOVE.

Final Regulation: 34 C.F.R. § 403.33
Perkins Act: § 113(c)

The final regulations require a 60-day formal State Plan review and comment period by the State Job Training Coordinating Council (SJTCC) and the State Council on Vocational Education (SCOVE). According to the Secretary, this provision is reasonable and necessary to carry out coordination and review functions among the State Board, SCOVE and SJTCC.

11. State Activities Subject to Local Requirements

NPRM: § 403.63(d)(1) and § 403.190
Perkins Act: § 240

The NPRM would require any project, service or activity carried out by a school operated by the State Board or any other State agency or institution (such as corrections) to be subject to the onerous application requirements for eligible recipients under § 240 of the Act and § 403.190 of the regulations.

Final Regulation: 34 C.F.R. § 403.63(d)(1) and § 403.190
Perkins Act: § 240

The final regulations do not amend the NPRM with respect to application requirements for schools operated by State Boards or any other State agency or institution. The final regulations at § 403.63(d) provide that the requirements dealing with local applications at § 403.190 apply to such State-administered entities. Nonetheless, the comment analysis at 57 FR 36825 states that § 403.190 does *not* apply to State-operated schools. Thus, the regulation contradicts the policy statement in the comment analysis. Until this inconsistency is corrected by the Department, the regulation takes precedence.

12. Constitutionality of Equity Program for Women

NPRM: § 403.91
Perkins Act: § 222(a)(2)

When President Bush signed the legislation on September 25, 1990, he questioned the constitutional legality of § 222(a)(2), which authorizes programs for girls and women, ages 14 through 25.

Final Regulation: 34 C.F.R. § 403.91
Perkins Act: § 222(a)(2)

The final regulations make no revisions to the NPRM provisions relating to the set-aside for girls and women under the sex equity program. We view this action to mean that the Secretary has no further constitutional concerns over the legality of this set-aside.

The Proposed Regulations | **The Final Regulations**

13. Examples of Funding Priorities

The Proposed Regulations

NPRM: § 403.111(b)
Perkins Act: §§ 235(a), 235(b)

Section 235(a) of the Perkins Act requires each recipient to use the federal funds at a *limited number* of sites or program areas. Section 235(b) requires that the recipient give *priority* to sites or programs that serve the highest concentrations of special populations.

The NPRM illustrates the § 235(b) priority requirement by suggesting "a funding cut-off point" below which sites would not be funded.

The Final Regulations

Final Regulation: 34 C.F.R. § 403.111(b)
Perkins Act: §§ 235(a), 235(b)

The comment analysis section at 57 FR 36830 now clarifies the Department's position on prioritizing sites or program areas. Although the examples in § 403.111(b) speak of a funding cut-off point when prioritizing, the comments state that the eligible recipient may fund sites or program areas below the cut-off point. Thus, there is no second cut-off point required by § 235(b) of the Act. Under § 235(a), however, recipients must limit assistance by not including all sites or program areas.

14. Equitable Participation of Special Populations

The Proposed Regulations

NPRM: § 403.111(c)(3)
Perkins Act: § 235

The draft regulation for § 403.111(c)(3) that was disseminated at the negotiated rulemaking session interpreted the phrase "equitable participation," but the NPRM does not.

At the rulemaking session, the term was defined as "requiring that special population members have an opportunity for participation in vocational education that is equal to the opportunity provided to the general population." Advocates for special populations argued that this interpretation did not go far enough and would not accommodate day care funds or other services needed by disadvantaged students.

The Final Regulations

Final Regulation: 34 C.F.R. § 403.111(c)(3)
Perkins Act: § 235

The final regulations define equitable participation to mean providing members of special populations with an opportunity to enter vocational education that is equal to that afforded to the general student population. This is the same interpretation of "equitable participation" offered by the Department during the negotiated rulemaking session in December of 1990. This revised definition must be distinguished from the requirement to provide full participation for special populations. The requirement for equitable participation is not limited to activities funded with Federal assistance, whereas the requirements for full participation pertain only to Perkins-funded activities. (See A-4 for further discussion of the requirements regarding full participation of special populations.)

The Proposed Regulations **The Final Regulations**

15. Equipment Restrictions

NPRM: § 403.111 (e)
Perkins Act: § 235(c)(3)

The earlier draft of the NPRM did not clarify the use of equipment by vocational students not participating in federally funded activities, appearing to restrict the use by such vocational students to after regular school hours or weekends. AVA urged the Department to make a distinction between shared use by vocational and non-vocational students. The NPRM has been completely redrafted in § 403.197 to permit the use of equipment for *other* vocational education purposes when not being used to carry out the purposes of the Act for which it was purchased.

Final Regulation: 34 C.F.R. § 403.197
Perkins Act: § 235(c)(3)

The final regulations do not amend NPRM provisions regarding equipment restrictions. Students in vocational programs and activities not funded under § 235 may use the equipment when it is not being used in the § 235 activity, and if the acquisition of the equipment was reasonable and necessary for the purposes of conducting the § 235 activity.

16. Consortia Arrangements

NPRM: § 403.112(d)(2)
Perkins Act: § 231(b)

Section 231(b) of the Perkins Act permits local education agencies (LEAs) to enter into consortia with other LEAs in order to satisfy the $15,000 funding minimum. The NPRM states: "(i) A consortium arrangement serves primarily as a structure for operating joint projects that provide services to all participating local educational agencies. (ii) Projects operated by a consortium must meet the size, scope and quality requirements of § 403.111(c)(1)."

The example contained in NPRM § 403.112(d)(2) also prohibits the fiscal agent of the consortium from subgranting back to the participating LEAs the amount they contributed to the consortium.

Final Regulation: 34 C.F.R. § 403.112(d)(2)
Perkins Act: § 231(b)

The final regulations maintain the NPRM provisions on consortia arrangements. A consortium arrangement must serve primarily as a structure for operating *joint* projects that provide services to *all* participating local educational agencies. The comment analysis at 57 FR 36831 appears to prohibit consortia from making subgrants to participating members to operate separate projects. If an LEA is located in a rural, sparsely populated area, then the State may waive the minimum grant requirement and authorize a separate project by making a direct grant to the LEA of less than $15,000.

17. Allocation to Area Schools

NPRM: §403.113(c) and § 403.190(a)
Perkins Act: § 231(d)

It has become readily apparent since the enactment of the Perkins Act that many quality programs at area vocational technical schools (AVTS) are at risk because of the statutory formula in § 231(d). Some states are finding that in these times of shrinking financial resources, LEAs are less than enthusiastic about forming consortia or entering into cooperative agreements with AVTS for the distribution of the federal funds.

On this issue NPRM § 403.113(c) provides that "a State shall *encourage* the LEA to form a consortium or enter a cooperative agreement...and transfer its allocation to an area vocational education school." On the other hand, the Department has previously stated both in ADVOCNET and at public meetings that the state may set its own priorities and may disapprove local applications that do not satisfy those priorities. Also, NPRM § 403.190(a) authorizes the state to establish its own requirements for local applications.

Final Regulation: 34 C.F.R. § 403.113(c) and § 403.190(a)
Perkins Act: § 231(d)

The final regulations retain the NPRM provisions calling on States to encourage LEAs to enter into arrangements for the purposes of making direct allocations of funds to area vocational schools, but not mandating that they do so. Within the final regulations' comment section at 57 FR 36832, the Secretary concludes that because the Act is silent on this question, to require consortia arrangements is a matter to be determined under State and local laws and regulations.

18. Alternative Postsecondary Formula

NPRM: § 403.118(b) & (c)
Perkins Act: § 232(b)

Section 232(b) of the Perkins Act permits a state to submit an alternative formula for distributing funds to postsecondary institutions. The Act provides that the "alternative formula *may include* criteria relating to the number of individuals attending institutions..."

The regulation repeats this language verbatim. Yet despite the permissive "may include" phrasing, the Department has indicated it will not approve any alternative formula unless it is based on the number of individuals attending an institution.

Subparagraph (c) of § 403.118 also adds five new requirements not contained in Section 232(b) of the Act or in earlier drafts of the regulations. These five restrictions on alternative postsecondary formulas apparently were developed after the Department received and reviewed the various alternative formulas proposed by States in the State plans submitted May 1, 1991.

Final Regulation: 34 C.F.R. § 403.118(b) and (c)
Perkins Act: § 232(b)

The final regulations retain the five requirements for acceptance of an *alternative* postsecondary formula in § 403.118(c), and add a sixth requirement that the alternative formula identifies a more accurate count of economically disadvantaged individuals in the aggregate than does the formula in § 403.116(b)(2). All six conditions are mandatory if the State proposes an alternative formula.

The final regulation also retains the provision at § 403.118(b) that the alternative formula "may include criteria relating to the number of individuals attending institutions." Yet, the comment analysis at 57 FR 36834 states that "the Secretary believes that Congress clearly intended that alternative criteria must relate to direct counts of enrolled students." Thus, the policy in the comment section mandates that the formula include counts of enrolled students, even though the regulation is permissive. However, the count of students under an alternative formula need not be based on enrollment in vocational programs, according to the comment analysis.

19. Consumer and Homemaking Administrative Costs

The Proposed Regulations	The Final Regulations
NPRM: § 403.151(c) **Perkins Act:** § 313(a) and 313(b)	**Final Regulation:** 34 C.F.R. § 403.151(c) **Perkins Act:** § 313(a) and 313(b)
Section 313(a) of the Act requires the state to have full-time state administrators for the consumer and homemaking program. Section 313(b) permits only six percent of the consumer and homemaking funds to be used for administration. While the NPRM permits funds from the Basic Grant for state administration to be used to supplement the administrative cost of the consumer and homemaking program, the total amount available is woefully inadequate to support more than one full-time administrator.	The Secretary did not make any changes to the NPRM provisions relating to consumer and homemaking administrative costs. The final regulations permit the State to supplement administrative cost funds with funding available under the 5 percent basic grant administrative set-aside provision. The State may also appoint one or more full-time State administrators.

20. Technical Assistance

The Proposed Regulations	The Final Regulations
NPRM: § 403.187 **Perkins Act:** § 201	**Final Regulation:** 34 C.F.R. § 403.187 **Perkins Act:** § 201
NPRM § 403.187 permits states to use a necessary and reasonable portion of funds for programs under Title II and Title III for the costs of providing technical assistance. For example, a state may reserve part of its 10.5 percent equity funds for statewide technical assistance functions.	The final regulations at § 403.187 continue to permit the State to reserve funds for each of the basic programs listed in § 403.60 and the special programs listed in § 403.130 to pay the costs of providing technical assistance that is necessary and reasonable to promote or enhance the quality and effectiveness of that program. Funds cannot be reserved from the Title III Supplementary State Grants Program for technical assistance.The NPRM at § 403.187(b) prohibited funds reserved for the Title III Supplementary State Grants Program to be used for technical assistance. The final regulation deletes this provision. However, the final regulation at § 407.22(b) now states that the State may not use these Title III supplementary State grant funds for technical assistance.

The Proposed Regulations

The Final Regulations

21. Incentives for Special Populations

NPRM: § 403.202(a)(3)
Perkins Act: § 115(b)

Section 115(b) of the Perkins Act requires adoption of a statewide system of core standards and measures of performance that includes incentives to encourage services for special populations. The regulation merely restates the language of the Act.

Final Regulation: 34 C.F.R. § 403.202(a)(3)
Perkins Act: § 115(b)

The final regulations retain the language of the NPRM's provisions regarding incentives to encourage services to special populations that are to be included in the State-wide system of core standards and measures of performance. According to the Secretary, neither the statute nor legislative history defines the term "incentives," and, for that reason, a State should be afforded broad authority to develop the "incentives" appropriate to meet its specific needs and circumstances. As such, the final regulations do not provide any substantive guidance as to the meaning of special populations "incentives."

22. Reporting Requirements

NPRM: § 400.10
Perkins Act: No Corresponding Section

The Preamble to the NPRM states that one of America 2000's major themes is that schools should be accountable for improving the effectiveness of the education provisions they administer. "As a corollary responsibility, the Department is increasing the accountability of projects it funds, thereby ensuring that demonstration and training projects better contribute to the improvement of education." The NPRM in § 400.10 establishes several reporting requirements for national discretionary programs. Appendix D contains specific directions to grantees on the type of information that they must submit. These requirements in many instances include monthly and quarterly progress, financial and performance reports.

Final Regulation: 34 C.F.R. § 400.10
Perkins Act: No Corresponding Section

The final regulations amend the NPRM's reporting provisions to require recipients under several of the national discretionary programs to submit their project performance reports on a semi-annual, rather than on a quarterly basis. Recipients under §§ 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427 and 428 must submit performance reports at least semi-annually.

Meanwhile, for the State administered programs under §§ 403, 406, and 407, the Secretary has clarified that performance and financial reports must be submitted to the Secretary on an annual basis.

23. Independence of State Councils

The Proposed Regulations

NPRM: § 403.19(c)
Perkins Act: § 112(e)

Section 112 of the Act mandates that State Councils function independent of programmatic and administrative control by other State boards, agencies and individuals. NPRM § 403.19(c) repeats this language verbatim. Evidence has surfaced, however, that the independence of State Councils is being challenged. In some instances, Council members have been arbitrarily replaced by Governors without any timely notification to the Department.

NPRM § 403.17(c) requires States to recertify to the Secretary any new member of the Council not more than 60 days after a position on the Council is vacated.

The Final Regulations

Final Regulation: 34 C.F.R. § 403.19(c)
Perkins Act: § 112(e)

With one exception, the final regulations do not change the NPRM's provisions relating to the independence of State councils. In the Secretary's view, there was no need to rewrite § 403.19, as it appropriately conveyed the requirement that State councils carry out their administrative and fiscal functions in an independent fashion. However, the Secretary states in the comment analysis that there is no basis in the Act for requiring terms of specific duration, limitations upon the duration of terms, or the appointment of members to staggered terms. The Secretary finds no mandate in the Act requiring specific procedures for the removal or replacement of council members. An appointing authority may appoint and remove council members *at will,* so long as the action is consistent with State law and does not impede the fiscal and administrative independence of the State council.

The Secretary did, however, make a technical amendment to § 403.19(c) to clarify that council functions, whether carried out directly by the council or by contract, are to be independent and free from programmatic and administrative control by State boards, agencies and individuals. Previously, under the NPRM, only the provision relating to contracted-for council activities included this independence provision.

Final Regulations to the Carl D. Perkins Vocational and Applied Technology Education Act of 1990

34 CFR Part 400, et al.

Published August 14, 1992

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428

RIN: 1830-AA08

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education

AGENCY: Department of Education

ACTION: Final Regulations

SUMMARY: The Secretary issues regulations governing three State-administered programs and 23 discretionary programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act (Act), Pub. L. 101-392, 104 Stat. 753 (1990). These regulations explain the types of activities that the Secretary may support under each program, and the basis on which the Secretary would make awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, Room 4050), 400 Maryland Avenue, S.W., Washington, D.C. 20202-7120. Telephone: (202) 205-8237. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, D.C. 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, which were enacted on September 25, 1990, amend the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq*. (1988)). Furthermore, amendments to the Act were made by Pub. L. 102-103, 105 Stat. 497 (1991). The Act authorizes Federal assistance for vocational education through fiscal year (FY) 1995.

The Act redirects Federal assistance for vocational education in order to focus the Federal funds on improving vocational education and, in particular, on improving vocational education and services for members of special populations, including disabled and disadvantaged individuals. Under the Act, a State must make broad assurances that members of the special populations will be given equal access to vocational education. In addition, an eligible recipient under Title II of the Act must make broad assurances that members of special populations will receive supplementary and other services necessary to succeed in the vocational education projects, services, and activities assisted with funds awarded under the State plan, and must give priority for assistance to limited numbers of sites or program areas that serve the highest concentrations of members of special populations. Subject to the requirements for services to members of special populations and to certain requirements for the distribution of funds, the State and its eligible recipients share increased authority to direct the use of the funds awarded under the Act to improve their vocational education programs. In exchange for this increased flexibility, the Act imposes new requirements on both a State and its eligible recipients, making them accountable for improving vocational education. Specifically, a State is required to assess the quality of its vocational education program using measurable objective criteria during each State plan cycle. Furthermore, a State is required to develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs. Using these statewide standards and measures, a recipient of funds under Title II, Part C of Act must annually evaluate the effectiveness of its projects, services, and activities receiving assistance under a basic program or a special program listed in §§403.60 or 403.130, respectively, unless the State determines that only a broader evaluation will be effective. In cases where substantial progress is not made toward meeting these standards and measures, the recipient must implement a local program improvement plan, and, if that is not successful, a State and local joint plan for improvement.

The Secretary strongly supports increased flexibility for State and local recipients in exchange for increased accountability. "AMERICA 2000, An Educational Strategy," which was announced by the President on April 18, 1991, emphasizes the need for better and more accountable schools as well as the need to provide opportunities for adults to continue learning. Clearly, these needed improvements must be implemented by the States and local recipients. Also consistent with promoting accountability in education is the Secretary's goal to conduct evaluations of all Federal grant programs, to the extent resources permit. To conduct these evaluations, the Secretary will collect uniform data from grantees about project results.

Vocational education must play a crucial role in achieving the six national goals for educational improvement underlying the AMERICA 2000 strategy. Vocational education must be improved and made more accessible for members of special populations in order for this Nation to achieve the goal of ensuring that every adult American will possess the knowledge and skills necessary to compete in a global economy (Goal 5). Moreover, improvements in vocational education can contribute to the Nation's achievement of a high school graduation rate of at least 90 percent by the year 2000 (Goal 2). Increased integration of vocational and academic education can contribute to the national goals of producing students that demonstrate competency in challenging subject matter, including English, mathematics, science, history, and geography (Goal 3) and students who lead the world in mathematics and science achievement (Goal 4).

The Act reflects many amendments that will assist States and local recipients in improving their vocational education programs.

Analysis of Comments and Changes

On October 11, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for the State Vocational and Applied Technology Education Programs and the National Discretionary Programs of Vocational Education in the *Federal Register* (56 FR 51448). In response to the Secretary's invitation in the NPRM, the Department received 808 letters commenting on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as Appendix C to these final regulations.

A summary of the significant changes in the regulations since publication of the NPRM follows. The changes are described in the order that they appear in the regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

The following significant changes have been made to the regulations:

(a) *Definitions*.

(1) *Coherent sequence of courses*. The definition of "coherent sequence of courses" in §400.4(b) has been revised to include sequential units encompassed within a single adult training or retraining course that otherwise meets the requirements of the definition. The Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act—including

competency-based adult training and retraining, which are invariably conducted as single courses.

(2) *Economically disadvantaged family or individual.* The definition of "economically disadvantaged family or individual" in §400.4(b) has been modified to include an individual who receives a Pell grant or assistance under a comparable State program of need-based financial assistance, or who is eligible to participate in programs assisted under Title II of the Job Training Partnership Act. Additionally, the phrase "or the Health and Human Services (HHS) Poverty Guidelines" has been added to paragraph (3) of the definition of "economically disadvantaged family or individual" following the reference to the Department of Commerce. The Secretary believes that receipt of a Pell grant or comparable State assistance, eligibility under Title II of the Job Training Partnership Act, and eligibility based on data from the HHS Poverty Guidelines are indices that would be representative of the economic status of students attending vocational education programs. These indices have been included in the regulations so that a case-by-case determination under paragraph (4) of the definition is not required prior to using them. A conforming change has been made to §403.114(a).

(b) *Reporting requirements.* As part of the Department's increased efforts to reduce regulatory burden, §400.10(b)(1) has been revised to require that recipients of grants and cooperative agreements under Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 must submit project performance reports to the Department at least semi-annually, rather than quarterly. A new paragraph (c) has been added to §400.10 to clarify that recipients of State-administered grants under Parts 403, 406, and 407 are only required to submit annual performance and financial reports to the Department. While the Secretary recognizes that reducing the reporting requirement from a quarterly reporting requirement to an annual reporting requirement would reduce paperwork burden for grantees even further, the Secretary believes that, for many of the discretionary programs funded under the Act, requiring grantees to report to the Department more frequently than once a year is essential to the Secretary's ability to provide adequate stewardship over the Federal funds awarded.

(c) *State councils on Vocational Education.*

(1) *Independence of State councils.* The clause containing the requirement that the State Council on Vocational Education perform its functions independently has been deleted from §403.19(c)(1)(ii). The Secretary has added a new paragraph (3) to §403.19(c), which provides that in carrying out any of its functions, whether carried out directly by council personnel or by way of one or more contracts for services, a State council must carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. This provision has been revised to more accurately reflect the requirement in section 112(e) of the Act that a State council must carry out all of its functions independent of programmatic and administrative control by other State boards, agencies, and individuals.

(2) *Release of grant awards to State councils.* The Secretary has revised §403.50(b)(2) so as to provide specifically that a State council on vocational education that otherwise has complied with all applicable requirements and has submitted its annual budget will be eligible to receive its grant award for the following year once the Secretary has determined that the State plan is in substantially approvable form. The Secretary does not think that Congress intended the statutory provisions providing for an allotment to a State council to result in the undermining of the council's objectivity and autonomy or to result in providing a reward to a State council for failing conscientiously and effectively to fulfill its advisory role. Because the Secretary believes that Congress intended each State council to assist the State board in the development of a high quality State plan in an objective and effective manner, the Secretary views a grant award to a State council as being authorized at the point at which: (1) there is no further compliance activity required on the part of the council, and (2) the State plan is in substantially approvable form.

(d) *Special populations.*

(1) *Services in addition to supplementary services.* The Secretary has clarified that the requirement in §403.111(a)(2)(i) to provide services other than supplementary services to members of special populations refers to the other services required by section 118(c) of the Act. Although the requirement for services in addition to supplementary services was recommended by the negotiators during the negotiated rulemaking, the Secretary believes that clarification of that requirement is necessary to make clear that the types of services that an eligible recipient must provide with funds awarded under Title II, Part C of the Act in addition to supplementary services are described in section 118(c) of the Act. Numerous commenters objected to the requirement to provide "other" services on the grounds that it would create an ambiguous, open-end requirement and an unwarranted burden.

(2) *Equitable participation.* Section 403.111(c)(3) has been changed to clarify that "equitable participation" means providing members of special populations with an opportunity to enter vocational education that is equal to that afforded to the general student population. This interpretation, which was added to the regulations in response to requests from numerous commenters, is similar to the one included in the draft regulations submitted to negotiated rulemaking. However, the revised regulations clarify the distinction in the Act concerning the requirement to provide an opportunity to members of special populations to enter a vocational education program as opposed to the requirement to provide the services necessary to enable members of special populations to participate fully and successfully in a vocational program.

(3) *State plan assurances.* A new §403.188 has been added to clarify that a State's financial responsibility to serve members of special populations under the assurances in section 118(a) of the Act and §403.32(a)(18)-(26) is not unlimited, and that a State is required to spend only funds awarded under the Act to satisfy these requirements, unless it is required by other applicable laws to spend non-Federal funds.

Equal access required by the assurances made pursuant to §403.32(a)(18)-(19) means providing members of special populations with the opportunity to enter vocational education that is equal to the opportunity provided to general population students. The Secretary does not believe that it is possible or appropriate to limit application of the assurances of equal access to students in specific projects, services, and activities that are funded under the Act. To do so would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for members of special populations. However, the Secretary does not believe the Act creates new civil rights or individual entitlements to particular services for members of special populations, nor does the Secretary believe that the Act creates an unlimited financial responsibility for a State to serve special population students.

(4) *Assurances in the local application.* Section 403.190(b) has been changed to clarify that the assurances to provide services to members of special populations apply only to an eligible recipient's projects that are assisted with grant funds awarded under the basic and special programs—not to every project assisted under Title III of the Act. Both the basic programs under Title II of the Act, which are listed in §403.60, and the so-called "special programs" under Title III of the Act, which are listed in §403.130, are subject to the requirements of the State plan. While section 118(c) of the Act is clear that only recipients of funds awarded under Title II of the Act are required to make the assurances related to members of special populations, section 118 of the Act is more broadly worded as to which special populations students must be served. Both the broad language of section 118(c) of the Act and

the placement of the provisions in Title I of the Act which relates to State plan and other general requirements—rather than within Title II, Part C of the Act—support a broader interpretation of the scope of these assurances. The scope of this requirement is consistent with the revision to the scope of the local evaluation required under section 117 of the Act.

(e) *Evaluation.*

(1) *Scope of the requirement.* Proposed §403.191(a)(1) provided that a recipient of funds under Title II, Part C of the Act must evaluate annually the effectiveness of its entire vocational education program regardless of the source of funding. Sections 403.191(a)(1), (c)(2), and (d) have been changed to indicate that a recipient of funds awarded under Title II, Part C of the Act must evaluate only the particular projects, services, and activities assisted under the basic programs in §403.60, or the special programs in §403.130, unless the State board determines under revised §403.201(a)(3) that a broader evaluation is needed. Corresponding changes have been made to §403.192(b)(1), regarding the requirement for a local improvement plan. Section 403.201(a)(3) has been changed to require a State board to determine whether a recipient of funds under Title II, Part C of the Act must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program in order to assess the effectiveness of those projects, services, and activities. Section 403.201(a)(4) has been added to require a State board to (1) determine whether the entire local vocational education program—or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic or special program; and (2) require a recipient to conduct an evaluation consistent with the State board's determination. These changes were made in response to numerous comments that the proposed requirement to evaluate a recipient's entire vocational program would impose undue burden on recipients. The Secretary notes that the change in the scope of the evaluation requirement is also in keeping with the Department's heightened efforts to reduce regulatory burden and increase flexibility for educators.

The Secretary wishes to emphasize that there are reasons why a State may decide to require a local evaluation that is broader in scope than the minimum required by §403.191, as revised. A State has the flexibility and responsibility under revised §403.201(a)(3) and (4) to require a broader evaluation. A State could determine that, because its recipients may use funds awarded under the Act jointly with State and local funds or for isolated costs such as equipment, the recipients cannot measure the impact of the Federal funds alone. A State also could determine, based on its particular needs and objectives and those of its recipients, that it is necessary to measure overall program improvement using the system of standards and measures developed under §§403.201 and 403.202 and not simply the impact of the funds awarded under the Act. In any instance in which a State decides that a broader evaluation is required under §403.201(a)(3), a State is subject to the requirements of §400.7(b).

In order to further reduce burden and increase flexibility, the Secretary encourages States to coordinate evaluation systems to eliminate duplication, so long as the statewide measures developed under the Act are addressed.

(2) *Sampling.* The Secretary has also reduced the burden of implementing the evaluation requirement by clarifying in §403.191 that recipients may rely on representative samples in conducting the evaluation. Because there is a wide variety of the types of projects assisted under the basic or special programs, the populations participating, and the range in size of recipients, the regulations give recipients flexibility in using sampling. A recipient may choose, for example, to conduct an evaluation based on a representative sample of students, or of students in a particular grade, or of sites assisted under the Act. A recipient is not limited to sampling by these examples, and not all of these samples will result in reliable data for every eligible recipient. Therefore, §403.191 gives a recipient the flexibility to determine which methods to employ as it is in the best position to know which methods are most feasible, cost effective, and reliable for it.

(3) *Use of funds.* In response to the confusion expressed by commenters, §403.191(e) has been added to clarify that a recipient may use funds awarded under the Act to support the cost of the evaluation required in §403.191, provided that all applicable requirements in the Act are met. In keeping with the goal of flexibility, and the Department's past practice of excluding the costs of evaluations from the costs of administration, if a recipient uses funds awarded under Title II, Part C of the Act for evaluation, the recipient is not required to count those costs as part of the five percent that a recipient may reserve for administration under section 235(c)(4) of the Act.

(f) *Tech-prep education program—Preparatory services.* A change has been made to §406.3(b)(7) and elsewhere to indicate that preparatory services must be provided under tech-prep education programs for all populations.

Comments related to this provision make clear that the use of the term "preparatory services" in connection with tech-prep programs has created confusion. That term as defined in section 521(24) refers to services for "individuals who are not enrolled in vocational education programs" and includes services that are not applicable to students who are enrolled in vocational education programs, such as outreach and recruitment. Thus, the Secretary believes that the requirement to provide preparatory services to all "participants" under section 344(b)(7) of the Act is inconsistent with the definition of "preparatory services" in section 521(24) of the Act, which includes only services appropriate for individuals not enrolled in vocational education. Item 182 of the Conference Report accompanying the Act indicates that the requirement to provide preparatory services to all participants originated in section 212(b)(6) of the Senate amendment as a requirement to provide pre-vocational programs that assist the participants in sections 223 and 242 of the Senate amendment, which included discrete populations such as the economically disadvantaged, criminal offenders, and single parents. (H.R. Rep. No. 660, 101st Cong., 2d Sess. 138 (1990).) The conferees agreed to make a conforming amendment to change "pre-vocational" to "preparatory" and, without explanation, changed "participants in sections 223 and 242" to "all participants." Based on the legislative history of the Act, the Secretary believes that Congress intended to require preparatory services related to tech-prep education for "all populations"—not all participants.

(g) *Competition for the National Center or Centers for Research in Vocational Education Program (National Center).* Section 413.20 has been revised to clarify that, while the Secretary holds two competitions for the National Center and judges applications according to the criteria in §413.21 (for applied research and development activities) and §413.22 (for dissemination and training activities), in accordance with section 404(a)(5) of the Act, the Secretary intends to give preference in grant selection to an institution or consortium of institutions that demonstrates the ability to carry out effectively both activities listed in section 404(a) of the Act and in §413.3(a) and (b). Section 413.20(h) of the NPRM, which provided for the assignment of five preference points to certain applications, has been deleted. In lieu of preference points, provided for in the proposed regulations, new paragraphs (h) and (i) have been added to §413.20 to explain the specific process by which the Secretary determines the ability of applicants to carry out both program activities effectively and by which the Secretary gives preference to the selection of a single grant recipient. Finally, a new paragraph (j) has been added to §413.20 to clarify that, in the event that no applicant institution or consortium of institutions demonstrates to the Secretary its ability to carry out both activities effectively, the Secretary makes two grant awards to the applicants scoring the highest in each of the competitions.

The Secretary believes that these revisions to §413.20 are responsive to the commenters' concerns, provide for an equitable and efficient competition that gives a strong preference to funding a single institution or consortium, and ensure that, if a single institution or consortium is indeed funded, it will have demonstrated the ability to carry out both program functions effectively and in accordance with the purposes of section 404 of the Act.

(h) *Bilingual Vocational Instructor Training Program.* Sections 428.1, 428.3(a)(1), 428.10(h), 428.21(a)(2), 428.21(b)(1)(i) and (iii), and 428.21(b)(2) have been revised to authorize the training of secondary vocational instructors in training projects supported under the Bilingual Vocational Instructor Training Program. As proposed, §428.1 would have limited training under the Bilingual Vocational Instructor Training Program to personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. The proposed regulations were intended to reinforce the traditional link between the Bilingual Vocational Instructor Training Program and the Bilingual Vocational Training Program that is limited by law to training "limited English proficient out-of-school youth and adults." However, the Secretary has modified this approach because it had the disadvantage of slowing the pace with which secondary vocational education institutions might adopt the highly successful bilingual vocational training models developed under the Bilingual Vocational Instructor Training Program. It also had the disadvantage of giving local agencies and institutions less flexibility to use Federal funds to address locally defined educational needs.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Programs covered by 34 CFR Parts 402, 403, 405, 406, 407, 408, 409, 412, 414, 415, 417, 421, 422, 423, 424, 425, 426, 427, and 428 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 400

Administrative practices and procedure, Education, Grant programs, and Vocational education.

34 CFR Parts 401, 410, and 425

Education, Indian education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 402, 407, 408, 409, 412, 415, and 423

Education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 403

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Manpower training programs, Minority groups, Prisoners, Private schools, Reporting and recordkeeping requirements, Schools, Vocational education, and Women.

34 CFR Parts 405 and 406

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Labor unions, Minority groups, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 411 and 413

Education, Education research, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 414

Education, Reporting and recordkeeping requirements, Telecommunications, and Vocational education.

34 CFR Parts 416, 417, 418, and 419

Education, Reporting and recordkeeping requirements, Scholarships and fellowships, and Vocational education.

34 CFR Parts 421 and 426

Education, Business and industry, Labor unions, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 422

Education, Prisoners, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 424

Education, Education of disadvantaged, Education of handicapped, Minority groups, Reporting and recordkeeping requirements, Vocational education, and Women.

34 CFR Parts 427 and 428

Bilingual education, Education, Reporting and recordkeeping requirements, and Vocational education.

Redesignation Table

In order to accommodate new programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, several part numbers in Chapter IV of Title 34 are redesignated. The following table lists old and new part numbers for all vocational education programs in Chapter IV of Title 34.

NEW 34 CFR PART NOS.	Title	OLD 34 CFR PART NOS.
400	Vocational and Applied Technology Education—General Provisions	400
401	Indian Vocational Education Program	410
402	Native Hawaiian Vocational Education Program	410
403	State Vocational and Applied Technology Education Program	401
404	[RESERVED]	
405	National Tech-Prep Education Program	NEW
406	State-Administered Tech-Prep Education Program	NEW
407	Supplementary State Grants Program	NEW
408	Community Education Employment Centers Program	NEW
409	Vocational Education Lighthouse Schools Program	NEW
410	Tribally Controlled Postsecondary Vocational Institutions Program	NEW
411	Vocational Education Research Program	416

NEW 34 CFR PART NOS.	Title	OLD 34 CFR PART NOS.
412	National Network for Curriculum Coordination in Vocational and Technical Education	NEW
413	National Center or Centers for Research in Vocational Education Program	417
414	Materials Development in Telecommunications Program	NEW
415	Demonstration Centers for the Training of Dislocated Workers Program	411
416	Vocational Education Training and Study Grants Program	NEW
417	Vocational Education Leadership Development Awards Program	NEW
418	Vocational Educator Training Fellowships Program	NEW
419	Internships for Gifted and Talented Vocational Education Students Program	NEW
420	[RESERVED]	
421	Business and Education Standards Program	NEW
422	Educational Programs for Federal Correctional Institutions	NEW
423	Vocational Education Dropout Prevention Program	NEW
424	Model Centers of Regional Training for Skilled Trades Program	NEW
425	Demonstration Projects for the Integration of Vocational and Academic Learning Program	NEW
426	Cooperative Demonstration Programs	412
427	Bilingual Vocational Training Program	407
428	Bilingual Vocational Instructor Training Program	408
429	Bilingual Materials, Methods, and Techniques Program	409
430-444	[RESERVED]	
445	Technology Education Demonstration Program	445

Dated: August 6, 1992

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training Program), 84.101 (Indian and Hawaiian Natives Program), 84.174 (State Assistance for Vocational Education Support Programs by Community-Based Organizations), 84.193 (Demonstration Centers for the Training of Dislocated Workers), 84.199 (Cooperative Demonstration Programs), 84.243 (State-Administered Tech-Prep Education Program), 84.244 (Business and Education Standards Program), 84.245 (Tribally Controlled Postsecondary Vocational Institutions Program), 84.248 (Demonstration Projects for the Integration of Vocational and Academic Learning Program), and 84.253 (Supplementary State Grants Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for the National Tech-Prep Education Program, Community Education Employment Centers Program, Vocational Education Lighthouse Schools Program, Materials Development in Telecommunications Program, Vocational Education Training and Study Grants Program, Vocational Education Leadership Development Awards Program, Vocational Education Training Fellowships Program, Internships for Gifted and Talented Vocational Education Students Program, Educational Programs for Federal Correctional Institutions, Vocational Education Dropout Prevention Program, and Model Centers of Regional Training for Skilled Trades.)

Chapter IV of Title 34 of the Code of Federal Regulations is amended as follows:

1. Part 409 is redesignated as Part 429.
2. Part 400 is revised to read as follows:

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Sec.

400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

400.2 What programs are governed by these regulations?

400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

400.5 Under what conditions may funds under the Act be used for the joint funding of programs?

400.6 What are the requirements for establishing a State Committee of Practitioners?

400.7 What are the provisions governing the issuance of State core standards and measures of performance and State rules or regulations?

400.8 What are the provisions governing student assistance?

400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?

400.10 What are the reporting requirements?

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

(a) The purpose of the Vocational and Applied Technology Education Programs is to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population.

(b) The purpose will be achieved principally through concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society.

(Authority: 20 U.S.C. 2301)

§400.2 What programs are governed by these regulations?

The regulations in this part apply to the Vocational and Applied Technology Education Programs as follows:

(a) *State-administered programs.*

(1) State Vocational and Applied Technology Education Program (34 CFR Part 403).

(2) State-Administered Tech-Prep Education Program (34 CFR Part 406).

(3) Supplementary State Grants Program (34 CFR Part 407).

(b) *National discretionary programs.*

(1) Indian Vocational Education Program (34 CFR Part 401).

(2) Native Hawaiian Vocational Education Program (34 CFR Part 402).

(3) National Tech-Prep Education Program (34 CFR Part 405).

(4) Community Education Employment Centers Program (34 CFR Part 408).

(5) Vocational Education Lighthouse Schools Program (34 CFR Part 409).

(6) Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR Part 410).

(7) Vocational Education Research Program (34 CFR Part 411).

(8) National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR Part 412).

(9) National Center or Centers for Research in Vocational Education (34 CFR Part 413).

(10) Materials Development in Telecommunications Program (34 CFR Part 414).

(11) Demonstration Centers for the Training of Dislocated Workers Program (34 CFR Part 415).

(12) Vocational Education Training and Study Grants Program (34 CFR Part 416).

(13) Vocational Education Leadership Development Awards Program (34 CFR Part 417).

(14) Vocational Educator Training Fellowships Program (34 CFR Part 418).

(15) Internships for Gifted and Talented Vocational Education Students Program (34 CFR Part 419).

(16) Business and Education Standards Program (34 CFR Part 421).

(17) Educational Programs for Federal Correctional Institutions (34 CFR Part 422).

(18) Vocational Education Dropout Prevention Program (34 CFR Part 423).

(19) Model Centers of Regional Training for Skilled Trades Program (34 CFR Part 424).

(20) Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR Part 425).

(21) Cooperative Demonstration Programs (34 CFR Part 426).

(22) Bilingual Vocational Training Program (34 CFR Part 427).

(23) Bilingual Vocational Instructor Training Program (34 CFR Part 428).

(24) Bilingual Materials, Methods, and Techniques Program (34 CFR Part 429).

(Authority: 20 U.S.C. 2301 *et seq.*)

§400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

The following regulations apply to the Vocational and Applied Technology Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs) (applicable to Parts 401, 402, 405, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429 except that 34 CFR 75.720(b) does not apply to performance reports under Parts 401, 402, 405, 408, 409, 412, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428, and to 0financial reports under Parts 412 and 413).

(3) 34 CFR Part 76 (State-Administered Programs) (applicable to Parts 403, 406, and 407).

(4) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities) (not applicable to

Parts 401, 410, 411, 413, 418, and 419).

(6) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR Part 82 (New Restrictions on Lobbying) (not applicable to Parts 401 and 410).

(9) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR Chapter 34 (applicable to contracts under Parts 401, 402, 411, 412, 426, 427, 428, and 429).

(c) The regulations in this Part 400.

(d) The regulations in 34 CFR Parts 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429.

(Authority: 20 U.S.C. 2301 *et seq.*)

§400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) *Definitions in EDGAR.* The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
EDGAR
Elementary school
Facilities
Federally recognized Indian tribal government
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project
Public
Recipient
Secondary school
Secretary
State educational agency
Subgrant
Subgrantee
Supplies

(b) *Other definitions.* The following definitions also apply to the regulations for Vocational and Applied Technology Education Programs.

Act means the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*), as amended by Pub. L. 101-392, 104 Stat. 753 (1990), and Pub. L. 102-103, 105 Stat. 497 (1991), unless otherwise indicated.

Administration means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, or research activities.

All aspects of an industry includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry.

Americans with Disabilities Act of 1990 or *ADA* mean the Act in 42 U.S.C. 12101 *et seq.*

Apprenticeship training program means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act (29 U.S.C. 50), that is conducted or sponsored by an employer, a group of employers, or a joint apprenticeship committee representing both employers and a union, and that contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

Area vocational education school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in not less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college, community college, or university that operates under the policies of the State board and provides vocational education in not less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraph (3) of this definition or in this paragraph, it admits as regular students both individuals who have completed high school and individuals who have left high school.

Career guidance and counseling means programs that—

(1) Pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision-making, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Assist those individuals in making and implementing informed educational and occupational choices.

Chapter 1 means Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).

Coherent sequence of courses means a series of courses in which vocational and academic education are integrated, and which directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education, academic education, and adult training or retraining, including sequential units encompassed within a single adult retraining course, that otherwise meet the requirements of this definition.

Community-based organization means a private nonprofit organization of demonstrated effectiveness that is representative of communities or significant segments of communities and that provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, WAVE, Inc., Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973 (29 U.S.C. 706(10)), agencies serving youth, agencies serving individuals with disabilities, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and an organization of demonstrated effectiveness serving non-reservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Authority: 20 U.S.C. 2471(6); 41 U.S.C. 1503(5))

Construction includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

Cooperative education means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field. The two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

Criminal offender means any individual who is charged with, or convicted of, any criminal offense, including a youth offender or a juvenile offender.

Correctional institution means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

Curriculum materials means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field that is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

Disadvantaged refers to individuals (other than individuals with disabilities) who have economic or academic disadvantages and who require special services and assistance in order to enable these individuals to succeed in vocational education programs. This term includes individuals who are members of economically disadvantaged families, migrants, individuals of limited English proficiency, and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (on which the grade *A* equals 4.0), or who fails to attain minimum academic competencies may be considered *academically disadvantaged*. The definition does not include individuals with learning disabilities.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills; and

(3)(i) Has been dependent on public assistance or on the income of a relative but is no longer supported by that income;

(ii) Is a parent whose youngest dependent child will become ineligible to receive assistance under Part A of Title IV of the Social Security Act (42 U.S.C. 601), Aid to Families with Dependent Children, within two years of the parent's application for assistance under the Carl D. Perkins Vocational and Applied Technology Education Act;

(iii) Is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iv) Is described in paragraphs (1) and (2) of this definition and is a criminal offender.

Economically disadvantaged family or individual means a family or individual that is—

(1) Eligible for any of the following:

(i) The program for Aid to Families with Dependent Children under Part A of Title IV of the Social Security Act (42 U.S.C. 601).

(ii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iii) To be counted for purposes of section 1005 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2701).

(iv) The free or reduced-price meals program under the National School Lunch Act (42 U.S.C. 1751).

Note to paragraph (1)(iv): The National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in a free or reduced-priced meals program to determine eligibility for projects, services, and activities under the Vocational and Applied Technology Education Programs.

(v) Participation in programs assisted under Title II of the JTPA.

(2) In receipt of a Pell grant or assistance under a comparable State program of need-based financial assistance.

(3) Determined by the Secretary to be low-income according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

(4) Identified as low income according to other indices of economic status, including estimates of those indices, if a grantee demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(Authority: 20 U.S.C. 2341(d)(3))

Eligible recipient means, except as otherwise provided, a local educational agency, an area vocational education school, an intermediate educational agency, a postsecondary educational institution, a State corrections educational agency, or an eligible institution as defined in 34 CFR 403.117(a).

General occupational skills means strong experience in, and understanding of, all aspects of an industry.

High technology means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

IDEA means the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), formerly entitled Education of the Handicapped Act.

Individual with disabilities means any individual with any disability (as defined in section 3(2) of the Americans With Disabilities Act of 1990), which includes any individual who—

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;

(2) Has a record of an impairment described in paragraph (1) of this definition; or

(3) Is regarded as having an impairment described in paragraph (1) of this definition.

Note: This definition necessarily includes any individual who has been evaluated under Part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services; and any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

(Authority: 42 U.S.C. 12102(2))

Individualized education program means a written statement for a disabled individual developed in accordance with sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)).

Institution of higher education. (1) The term means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(ii) Is legally authorized within such State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) The term also includes—

(i) Any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1)(i), (ii), (iv), and (v) of this definition; and

(ii) A public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)).

(Authority: 20 U.S.C. 1141(a))

Intermediate educational agency means a combination of school districts or counties (those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties) as are recognized in a State as an administrative agency for that State's vocational or technical education schools or for vocational programs within its public elementary or secondary schools. This term includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(Authority: 20 U.S.C. 2891(5))

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Limited English proficiency, if used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who come from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3223(a)(1))

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. For the purposes of sections 114, 115, 116, 117, and 240 of the Act (implemented at 34 CFR 403.31(e) and (f), 403.32(c)(3), 403.190, 403.191, 403.192, 403.201, 403.202, and 403.204), this term includes a State corrections educational agency.

Measure means a description of an outcome.

(Authority: H.R. Rep. No. 41, 101st Cong., 1st Sess. 13 (1989))

Postsecondary educational institution means an institution legally authorized to provide postsecondary education within a State, a Bureau of Indian Affairs-controlled postsecondary institution, or any postsecondary educational institution operated by, or on behalf of, any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the Act of April 16, 1934 (25 U.S.C. 452).

Preparatory services means services, programs, or activities designed to assist individuals who are not enrolled in vocational education programs in the selection of, or preparation for participation in, an appropriate vocational education training program. Preparatory services may include, but are not limited to —

(1) Services, programs, or activities related to outreach to, or recruitment of, potential vocational education students;

(2) Career counseling and personal counseling;

(3) Vocational assessment and testing; and

(4) Other appropriate services, programs, or activities.

Private vocational training institution means a business or trade school, or technical institution or other technical or vocational school, in any State, that—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) By a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category. The committee shall prescribe the standards of content, scope, and quality that must be met by those schools and shall also determine whether particular schools meet those standards.

Program effectiveness panel means the panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Program year or *academic year* mean the twelve-month period during which a State operates its vocational education program (which is most generally a period beginning on July 1 and ending on the following June 30).

(Authority: 20 U.S.C. 1225(a))

Rehabilitation Act of 1973 means the Act in 29 U.S.C. 701 *et seq.*

School facilities means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

Sequential course of study means an integrated series of courses that are directly related to the educational and occupational skills preparation of individuals for jobs, or preparation for postsecondary education.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has a minor child or children for which the parent has either custody or joint custody; or

(ii) Is pregnant.

Small business means a for-profit enterprise employing 500 or fewer employees.

Special populations refers to individuals with disabilities, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions.

Specific job training means training and education for skills required by an employer to provide the individual student with the ability to obtain employment and to adapt to the changing demands of the workplace.

Spread means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated.

Standard means the level or rate of an outcome.

(Authority: H.R. Rep. No. 41, 101st Cong., 1st Sess. 13 (1989))

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99-658 (48 U.S.C. 1681)).

State board means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State.

State corrections educational agency means the State agency or agencies responsible for carrying out corrections education programs in the State.

State council means the State council on vocational education established in accordance with 34 CFR 403.17 through 403.19.

Supplementary services means curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

Technology education means an applied discipline designed to promote technological literacy that provides knowledge and understanding of the impacts of technology including its organizations, techniques, tools, and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power, and energy.

Transportability means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

Tribally controlled community college means an institution that receives assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a).

Vocational education means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

Vocational student organizations means those organizations for individuals enrolled in vocational education programs that engage in activities as an integral part of the instructional program. These organizations may have State and national units that aggregate the work and purposes of instruction in vocational education at the local level.

Wagner-Peyser Act means the Act in 29 U.S.C. 49 *et seq.*

(Authority: 20 U.S.C. 2471)

§400.5 Under what conditions may funds under the Act be used for the joint funding of programs?

(a) Funds made available under the Act may be used to provide additional funds under any of the programs in—

(1) Title II, section 123 and Title III of the JTPA; or

(2) The Wagner-Peyser Act.

(b) Funds used to carry out paragraph (a) of this section may be used only if the—

(1) Program otherwise meets the requirements of the Act and the requirements of the programs in paragraph (a)(1) and (2) of this section;

(2) Program serves the same individuals that are served under the Act;

(3) Program provides services in a coordinated manner with services provided under the Act; and

(4) Funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(c) Funds that meet the conditions in paragraphs (a) and (b) of this section may be used as matching funds.

(Authority: 20 U.S.C. 2468)

§400.6 What are the requirements for establishing a State Committee of Practitioners?

(a) *Consultation.* A State shall appoint a State Committee of Practitioners (Committee) after consulting with—

(1) Local school officials representing eligible recipients;

(2) Representatives of—

(i) Organized labor;

(ii) Business;

(iii) Superintendents;

(iv) Community-based organizations;

(v) Private industry councils established under section 102(a) of the JTPA (29 U.S.C. 1512);

(vi) State councils;

(vii) Parents;

(viii) Special populations; and

(ix) Correctional institutions;

(3) The administrator appointed under 34 CFR 403.13(a);

(4) The State administrator of programs assisted under Part B of the IDEA;

(5) The State administrator of programs assisted under Chapter 1;

(6) The State administrator of programs for students of limited English proficiency; and

(7) Guidance counselors.

(b) *Committee selection.* The State shall select the Committee from nominees solicited from—

(1) State organizations representing school administrators;

(2) Teachers;

(3) Parents;

(4) Members of local boards of education; and

(5) Appropriate representatives of institutions of higher education.

(c)(1) *Committee membership.* The Committee must consist of—

(i) Representatives of local educational agencies, who must constitute a majority of the members of the committee;

(ii) School administrators;

(iii) Teachers;

(iv) Parents;

(v) Members of local boards of education;

(vi) Representatives of institutions of higher education; and

(vii) Students.

(2) School administrators, teachers, and members of local boards of education may be counted as representatives of LEAs for purposes of paragraph (c)(1)(i) of this section.

(Authority: 20 U.S.C. 2325(a) and (d)(1); 2468a)

§400.7 What are the provisions governing the issuance of State core standards and measures of performance and State rules or regulations?

(a)(1) *State standards and measures.* A State shall convene, on a regular basis, the Committee established under §400.6 to review, comment on, and propose revisions to a draft proposal that the State board develops for a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) The Committee shall make recommendations to the State board with respect to modifying statewide standards and measures based on information provided by the State under 34 CFR 403.201(d).

(b)(1) *State rules and regulations.* Except as provided in paragraph (b)(2) of this section, before a State publishes any proposed or final State rule or regulation for programs, services, or activities covered by the Act, the State shall convene the Committee for the purpose of reviewing the rule or regulation.

(2) In an emergency, in which a rule or regulation must be issued within a very limited time period to assist eligible recipients with the operation of projects, services, or activities, the State—

(i) May issue a proposed rule or regulation without meeting the requirements in paragraph (b)(1) of this section; but

(ii) Shall immediately convene the Committee to review the rule or regulation before it is issued in final form.

Cross-Reference: See §400.9(c).

(3) If a State policy is binding on eligible recipients and has the same effect as a formal rule or regulation, although it is not issued as one, that policy is covered by this section.

(Authority: 20 U.S.C. 2325(a); 2468a)

§400.8 What are the provisions governing student assistance?

(a) The portion of any student financial assistance received under the Act that is made available for attendance costs described in paragraph (b) of this section may not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) For purposes of this section, attendance costs are—

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, including costs for rental or purchases of any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending an institution on at least a half-time basis, as determined by the institution.

(Authority: 20 U.S.C. 2466d)

§400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?

In addition to the Act, applicable Federal laws, and regulations, the following requirements apply to Vocational and Applied Technology Education Programs:

(a) A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the information system developed by the Secretary under section 421 of the Act.

(b) Nothing in the Act is to be construed to be inconsistent with applicable Federal laws guaranteeing civil rights, or is intended to, or has the effect of, limiting or diminishing any obligations imposed under the IDEA or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) Any State rule, regulation, or policy imposed on the administration or operation of programs funded under the Act, including any rule, regulation, or policy based on a State's interpretation of any Federal law, regulation, or guideline, must be identified as a State imposed requirement.

(d) Funds provided under the Act may not be used for the purpose of directly providing incentives or inducements to relocate a business or enterprise from one State to another State if the relocation would result in a reduction in the number of jobs available in the State where the business enterprise is located before the incentives or inducements are offered.

(e) A State may not take into consideration payments under the Act in determining for any educational agency or institution in that State the eligibility for State aid or the amount of State aid with respect to public education within the State.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2421, 2424, 2466c, 2468b, 2468c, and 2468e(a)(2))

§400.10 What are the reporting requirements?

(a) Recipients of grants and cooperative agreements shall report information about students, projects, evaluations, dissemination, expenditures, accomplishments, and any other information, as may be required by the Secretary.

(b) Recipients of grants and cooperative agreements under—

(1) Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 shall submit performance reports at least semi-annually;

(2) Part 412 shall submit monthly progress and financial status reports and an annual impact report; and

(3) Part 413 shall submit monthly exception reports and quarterly financial status reports.

(c) Recipients of grants under Parts 403, 406, and 407 shall submit annual performance and financial reports.

(Approved by the Office of Management and Budget under Control No. 1830-0030.

(Authority: 20 U.S.C 2301 *et seq.*)

3. Part 401 is revised to read as follows:

PART 401—INDIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

401.1 What is the Indian Vocational Education Program?
401.2 Who is eligible for an award?
401.3 What activities must the Secretary fund?
401.4 What regulations apply?
401.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

401.10 How are applications submitted?

Subpart C—How Does the Secretary Make an Award?

401.20 How does the Secretary evaluate an application?
401.21 What selection criteria does the Secretary use?
401.22 What additional factors may the Secretary consider?
401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

Subpart D—What Conditions Must be Met After an Award?

401.30 How do the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?
401.31 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(b), unless otherwise noted.

Subpart A—General

§401.1 What is the Indian Vocational Education Program?

The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians.

(Authority: 20 U.S.C. 2313(b))

§401.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) A tribal organization of any Indian tribe that is eligible to contract with the

Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) A Bureau-funded school offering a secondary program.

(b) Any tribal organization or Bureau-funded school described in paragraph (a) of this section may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(c)(1) A consortium shall enter into an agreement signed by all members of the consortium, and designating one member of the consortium as the applicant and grantee.

(2) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(3) The applicant shall submit the agreement with its application.

Cross-Reference: See 34 CFR 75.127-75.129—Group applications.

(Authority: 20 U.S.C. 2313(b))

§401.3 What activities may the Secretary fund?

(a) The Secretary provides financial assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the purposes of the Act. In the case of a grant to a Bureau-funded school, the Secretary provides a minimum grant of $35,000.

(b) Projects funded under this program are in addition to other programs, services, and activities made available under other provisions of the Act to—

(1) Eligible Indians in need of vocational education; and

(2) Eligible Indian tribes as community-based organizations that receive State vocational education assistance.

(c) An award under this program may be used to provide a stipend to a student who—

(1) Is enrolled in a vocational education project funded under this program; and

(2) Has an acute economic need that cannot be met through work-study programs.

(d) The amount of a stipend may be the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage set under the Fair Labor Standards Act. A stipend may not be paid for time a student is not in attendance in a project.

(Authority: 20 U.S.C. 2313(b)(1) and (3))

§401.4 What regulations apply?

The following regulations apply to the Indian Vocational Education Program:

(a) The regulations in 34 CFR Part 400 (except that 34 CFR Parts 79 and 82 do not apply to this program).

(b) The regulations in this Part 401.

(Authority: 20 U.S.C. 2313(b))

§401.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Act of April 16, 1934 means the Federal law commonly known as the *Johnson-O'Malley Act* that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes (25 U.S.C. 455 - 457).

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

Bureau means the Bureau of Indian Affairs, Department of Interior.

Bureau-funded school means—

(1) A Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under sections 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 2019(3), (4), and (5))

Indian means a person who is a member of an Indian tribe.

(Authority: 25 U.S.C. 450b(d))

Indian tribe means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b(e))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by that governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. However, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each of those Indian tribes must be a prerequisite to the letting or making of that contract or grant.

(Authority: 20 U.S.C. 2313(a)(1)(A), (b); 25 U.S.C. 450b(1))

Subpart B—How Does One Apply for an Award

§401.10 How are applications submitted?

(a) An application from a tribal organization, other than a Bureau-funded school, must be submitted to the Secretary by the Indian tribe.

(b) An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(c) An application from a Bureau-funded school may be submitted directly to the Secretary.

(Authority: 20 U.S.C. 2313(b)(1); 25 U.S.C. 450b)

Subpart C—How Does the Secretary Make an Award?

§401.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §401.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §401.21.

(e) In addition to the 100 points to be awarded based on the criteria in §401.21, the Secretary awards—

(1) Up to 5 points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(2) Five points to applications from tribally controlled community colleges that—

(i) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(ii) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

(Authority: 20 U.S.C. 2313(b))

§401.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors*. (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment, completion, and placement (including placement in jobs or military specialties and in continuing education or training opportunities) that are realistic in terms of stated needs, resources, and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

(i) Methods of participant selection.

(ii) Assessment and feedback of participant progress.

(iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.

(iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need*. (15 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population;

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30 - 403.34 is designed to meet those needs.

(c) *Plan of operation*. (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements;

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel*. (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness*. (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan*. (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement of participants. The data must be broken down by sex and by occupation for which the training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities*. (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional educational or training opportunities that are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(b))

§401.22 What additional factors may the Secretary consider?

The Secretary may decide not to award a grant or cooperative agreement if—

(a) The proposed project duplicates an effort already being made; or

(b) Funding the project would create an inequitable distribution of funds under this part among Indian tribes.

(Authority: 20 U.S.C. 2313(b))

§401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant under §401.2(a)(1), an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Vocational and Adult Education to serve as a hearing officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 450f)

Subpart D—What Conditions Must Be Met After an Award?

§401.30 How do the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?

(a) Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f). These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part. Section 4 contains requirements pertaining to submission of an education plan by a contractor. Section 5 pertains to participation of parents of Indian children. Section 6 pertains to reimbursement for educating non-resident students.

(b) Grants to Bureau-funded schools are not subject to the requirements of the Indian Self-Determination Act or the Act of April 16, 1934.

(Authority: 20 U.S.C. 2313(b)(1)(A)(ii)(I) and (II))

§401.31 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired;

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided;

(3) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(4) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(5) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic and vocational skills competencies.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(b))

4. A new Part 402 is added to read as follows:

PART 402—NATIVE HAWAIIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

402.1 What is the Native Hawaiian Vocational Education Program?
402.2 Who is eligible for an award?
402.3 What activities may the Secretary fund?
402.4 What regulations apply?
402.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

402.20 How does the Secretary evaluate an application?
402.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

402.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(c), unless otherwise noted.

Subpart A—General

§402.1 What is the Native Hawaiian Vocational Education Program?

The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§402.2 Who is eligible for an award?

Any organization that primarily serves and represents native Hawaiians and that is recognized by the Governor of the State of Hawaii is eligible to apply for an award under this program.

(Authority: 20 U.S.C. 2313(c))

§402.3 What activities may the Secretary fund?

The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer programs, or portions of programs, that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§402.4 What regulations apply?

The following regulations apply to the Native Hawaiian Vocational Education Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this Part 402.

(Authority: 20 U.S.C. 2313(c))

§402.5 What definitions apply?

The following definitions apply to the Native Hawaiian Vocational Education Program:

(a) The definitions in 34 CFR Part 400.4 apply to this part.

(b) The following definition also applies to this part:

Native Hawaiian means any individual who has any ancestors who were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(Authority: 20 U.S.C. 2313(a)(1)(B))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§402.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in §402.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §402.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §402.21.

(Authority: 20 U.S.C. 2313(c))

§402.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Program design.* (35 points) The Secretary reviews each application to determine the extent to which—

(1) The application presents a complete program design, including identifying the services to be provided, who will provide them, how they will be provided, and the expected outcomes for each activity;

(2) The proposed program is designed to meet the identified vocational education needs of native Hawaiians;

(3) The application proposes an effective plan for coordination with the office of the Hawaii State director for vocational education; and

(4) If vocational training is proposed within the project—

(i) Proposes measurable goals for student enrollment, completion, and placement.

(ii) Proposes goals that take into consideration any related standards and measures developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) programs in that geographic area;

(iii) Proposes goals that take into consideration any standards set by the State board for vocational education for the occupation and geographic area; and

(iv) Describes how successful program completion will be determined for each occupation for which training is to be provided, in terms of the academic and vocational competencies demonstrated by enrollees prior to successful completion and any academic or work credentials acquired upon completion.

(b) *Management plan.* (25 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship among goals, objectives, and activities;

(3) The way the applicant plans to use the resources and personnel from the grant to achieve each objective; and

(4) How any contracts awarded by the grantee will be awarded, monitored, and evaluated.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Evaluation plan.* (10 points) (1) The Secretary reviews each application to determine the quality of the project's plan for an independent evaluation of the project, including, if applicable, the extent to which the plan includes activities during the formative stages of the project to help guide and improve the project, as well as a final evaluation that includes summary data and recommendations.

(2) The Secretary reviews each application to determine whether, for any training programs proposed—

(i) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers; and

(ii) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex and socio-economic status for each occupation for which training is provided.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(c))

Subpart D—What Conditions Must Be Met After an Award?

§402.3 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an external evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application; and

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress when training is provided by the project, including—

(i) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(c))

5. A new Part 403 is added to read as follows:

PART 403—STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAM

Subpart A—General

Sec.

403.1 What is the State Vocational and Applied Technology Education Program?

403.2 Who is eligible for an award?

403.3 What regulations apply?

403.4 What definitions apply?

Subpart B—What are the State's Organizational and Planning Responsibilities?

403.10 What is the State board?

403.11 What are the principal responsibilities of the State board?

403.12 What are the additional responsibilities of the State board?

403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?

403.15 What are the personnel requirements regarding coordination with services under Chapter 1 of Title I of the Elementary and Secondary Education Act?

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Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

Subpart A—General

§403.1 What is the State Vocational and Applied Technology Education Program?

(a) Under the State Vocational and Applied Technology Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer and conduct vocational education programs that are authorized by the Act.

(b) The State Vocational and Applied Technology Education Program consists of the programs under the basic programs for vocational education authorized by Title II of the Act and listed in §403.60, and the special programs authorized by Title III of the Act that are covered by the State plan and listed in §403.130.

(Authority: 20 U.S.C. 2301 *et seq.*)

§403.2 Who is eligible for an award?

Except as otherwise provided in §403.131, a State is eligible for an award under the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2311 and 2311a)

§403.3 What regulations apply?

The following regulations apply to the State Vocational and Applied Technology Education Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this Part 403.

(Authority: 20 U.S.C. 2301 *et seq.*)

§403.4 What definitions apply?

The definitions in 34 CFR 400.4 apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2471)

Subpart B—What are the State's Organizational and Planning Responsibilities?

§403.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education (State board). The State board must be the sole State agency responsible for the administration or the supervision of the State's vocational and applied technology education program.

(Authority: 20 U.S.C. 2321(a))

§403.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by §§403.32(a)(7) and (b)(9) and 403.201 through 403.204;

(c) The development, in consultation with the State council on vocational education, of the State plan and its submission to the Secretary, as required by §§403.30 through 403.34;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals, including business, industry, and labor, involved in the planning, administration, evaluation, and coordination of programs funded under the Act;

(e) Convening and meeting as a State board, consistent with applicable State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*).

(Authority: 20 U.S.C. 2321(a))

§403.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under §403.17, shall establish a limited number of (but at least two) technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures that are consistent with the purposes of the Act for membership, operation, and duration of the technical committees. Their membership must be composed of representatives of—

(i) Employers from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, if appropriate.

(c) Except for the functions described in §403.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(d) The State board shall carry out the responsibilities described in §§403.13 through 403.18 and 403.200 through 403.208.

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(Authority: 20 U.S.C. 2321(a)(1), (f), (g))

§403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall assign one individual, within the appropriate agency established or designated by the State board under §403.12(c), to administer vocational education programs within the State, to work full-time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents, displaced homemakers, and single pregnant women described in §403.81, and the sex equity program described in §403.91;

(2) Gathering, analyzing, and disseminating data on the—

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs described in paragraph (a)(2)(i) of this section;

(3) Reviewing and commenting upon, and making recommendations concerning, the plans of local educational agencies, area vocational education schools, intermediate educational agencies, and postsecondary educational institutions to ensure that the needs of women and men for training in nontraditional jobs are met;

(4)(i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices that tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations, to the State board for inclusion in the State plan, for programs and policies to overcome sex bias and sex stereotyping in the programs described in paragraph (a)(4)(i) of this section;

(5) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(6) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of the Act;

(7) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(8) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State on expanding vocational opportunities for women;

(9) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs;

(10) Developing an annual plan for the use of all funds available for programs described in §§403.81 and 403.91;

(11) Managing the distribution of funds pursuant to §§403.81 and 403.91;

(12) Monitoring the use of funds distributed to recipients under §§403.81 and 403.91;

(13) Evaluating the effectiveness of programs and activities supported by funds under §§403.81 and 403.91;

(14) On a competitive basis, allocating and distributing to eligible recipients or community-based organizations subgrants or contracts to carry out the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program;

(15) Ensuring that each subgrant or contract awarded under the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program is of sufficient size, scope, and quality to be effective;

(16) Developing procedures for the collection from eligible recipients or community-based organizations that receive funds under §§403.81 and 403.91 of data appropriate to the individuals served in programs under §§403.81 and 403.91 in order to permit an evaluation of effectiveness of those programs as required by paragraph (a)(13) of this section; and

(17) Cooperating in the elimination of sex bias and sex stereotyping in Consumer and Homemaking Education Programs.

(b) A State shall, in accordance with §403.180(b)(4)(i), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term *State* includes only the fifty States and the District of Columbia.

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(Authority: 20 U.S.C. 2312(a)(4)(A), 2321(b), 2335b, 2362(a)(3))

§403.14 What are the personnel requirements regarding coordinations with services for individuals with disabilities?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office responsible for administering Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) to review the implementation of the provisions of the Act as they relate to students with disabilities by reviewing all or a representative sample of applications of eligible recipients to ensure that—

(1) Individuals with disabilities are receiving vocational educational services;

(2) Applications of the eligible recipients provide assurances of compliance with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the IDEA and regulations implementing those statutes, regarding equal access to program; and

(3) Eligible recipients have—

(i) Identified the number of students with disabilities enrolled in the eligible recipients' vocational programs;

(ii) Assessed the vocational needs of those students; and

(iii) Developed an adequate plan to provide supplementary services sufficient to meet the needs of those students.

(b) For the purposes of this section, the term *State* includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c))

§403.15 What are the personnel requirements regarding coordination with services under Chapter 1 of Title I of the Elementary and Secondary Education Act?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for coordinating services under chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2701 *et seq.*) to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of economically disadvantaged students has been identified; and

(2) The needs of economically disadvantaged students are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State *includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.*

(Authority: 20 U.S.C. 2321 (c) and (d))

§403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of students of limited English proficiency has been identified; and

(2) The needs of students of limited English proficiency for participation in vocational educational programs are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (e))

§403.17 What are the State's responsibilities regarding a State council on vocational education?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall establish a State council on vocational education. The State council must be appointed—

(1) By the Governor; or

(2) By the State board of education, in a State in which the members of the State board of education are elected, including election by the State legislature.

(b) Each State shall certify to the Secretary the establishment and membership of the State council by June 1 prior to the beginning of each State plan period described in § 403.30.

(c) Each State shall recertify to the Secretary any new member of the State council not more than 60 days after a position on the State council is vacated.

(Authority: 20 U.S.C. 2322 (a), (b))

§403.18 What are the membership requirements of a State council on vocational education?

(a) Each State council must be composed of 13 individuals, and must be broadly representative of citizens and groups within the State having a interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representatives of business, industry, trade organizations, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations, and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, individuals with disabilities, individuals with limited English proficiency, and minorities.

(c) The State council may include members of vocational student organizations and school boards but may not include employees of the State board of vocational education.

(d) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(Authority: 20 U.S.C. 2322(a))

§403.19 What are the responsibilities of a State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 403.30 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan or any amendments to the current State plan, while the State plan or amendments is being developed;

(2) Make recommendations to the State board and make reports to the Governor, the business community, and general public of the State, concerning—

(i) The State plan;

(ii) Policies the State should pursue to strengthen vocational education, with particular attention to programs for individuals with disabilities; and

(iii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State that emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which individuals who are members of special populations are provided with equal access to quality vocational education programs;

(9) Analyze and review corrections education programs; and

(10)(i) At least once every two years—

(A) Evaluate the extent to which vocational education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(B) Evaluate the vocational education program delivery system assisted under the Act, and the job training program delivery system assisted under the JTPA, in terms of the delivery systems' adequacy and effectiveness in achieving the purposes of both Acts; and

(C) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA;

(ii) Comment on the adequacy or inadequacy of State action in implementing the State plan;

(iii) Make recommendations to the State board on ways to create greater incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

(iv) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education may—

(i) Obtain the services of the professional, technical, and clerical personnel necessary to enable it to carry out its functions under the Act;

(ii) Contract for the services necessary to enable it to carry out its evaluation functions; and

(iii) Submit a statement to the Secretary reviewing and commenting upon the State plan.

(2)(i) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(ii) Each State council on vocational education shall designate an appropriate State agency, or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(3) Each State council on vocational education shall carry out its functions, whether directly or by way of contract for services, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2322(c)-(e) and (f)(2); 2323(c))

Subpart C—How Does A State Apply for a Grant?

§403.30 What documents must a State submit to receive a grant?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall submit to the Secretary a State plan for a three-year period, in the case of the initial plan, and a two-year period thereafter, together with annual revisions the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational and Applied Technology Education Programs on the basis of program years that coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational and Applied Technology Education Program.

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(Authority: 20 U.S.C. 2323)

§403.31 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with, and utilize, the State council on vocational education established under §403.17.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) A State shall provide public notice of hearings on the State plan at least 30 days prior to the hearings.

(d) In developing a State plan, the State shall conduct an assessment according to § 403.203.

(e) The State board shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult education, postsecondary education, tech-prep education, and secondary education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, that agency shall file its objections with the State board.

(f) The State board shall, in developing the State plan, take into consideration the relative training and retraining needs of secondary, adult, and postsecondary students.

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(Authority: 20 U.S.C. 2323(a)(2) and 2324(a))

§403.32 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational and Applied Technology Program, the State shall, in its State plan, provide assurances that—

(1) The State board will comply with the applicable requirements of Titles I, II, III, and V of the Act and regulations implementing those requirements (including the maintenance of fiscal effort requirement in § 403.182);

(2) Eligible recipients will comply with the applicable requirements of Titles I, II, III, and V of the Act and the regulations implementing those requirements;

(3) The State board will develop measurable goals and accountability measures for meeting the needs of individuals who are members of special populations;

(4) The State board will conduct adequate monitoring of projects, services, and activities conducted by eligible recipients to ensure that the eligible recipients are meeting the goals described in paragraph (a)(3) of this section;

(5) To the extent consistent with the number and location of individuals who are members of special populations enrolled in private secondary schools, the State will provide for the participation of those individuals in the vocational education projects, services, and activities assisted under §§403.112 and 403.113;

Cross-Reference: See 34 CFR 76.650-76.662. Participation of Students Enrolled in Private Schools.

(6) The State will comply with provisions of §403.180, and will distribute all of the funds reserved for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs to eligible recipients pursuant to §§403.112, 403.113, and 403.116;

(7) The State will develop and implement a system of standards for performance and measures of performance for vocational education programs at the State level that meets the requirements of §§403.201 and 403.202;

(8) In the use of funds available for programs for single parents, displaced homemakers, or single pregnant women under §403.81, the State will—

(i) Emphasize assisting individuals with the greatest financial need; and

(ii) Give special consideration to displaced homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment;

(9) The State will furnish relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex;

(10) The State will fund programs of personnel development and curriculum development to further the goals identified in the State plan;

(11) The State has thoroughly assessed the vocational education needs of identifiable segments of the population in the State that have the highest rates of unemployment, and those needs are reflected in and addressed by the State plan;

(12) The State board will cooperate with the State council in carrying out the Board's duties under the State plan;

(13) None of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which that acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization;

(14) State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in those agencies that are not receiving funds under the Act;

Cross-Reference: See §§403.194 and 403.200.

(15)(i) The State board will provide leadership (qualified by experience and knowledge in guidance and counseling), supervision, and resources for comprehensive career guidance, vocational counseling, and placement programs; and

(ii) As a component of the assurances described in paragraph (a)(15)(i) of this section, the State board will annually assess and include in the State plan a report on the degree to which expenditures aggregated within the State for career guidance and vocational counseling from allotments under Title II of the Act are not less than expenditures for guidance and counseling within the State under the Carl D. Perkins Vocational Education Act in Fiscal or Program Year 1988;

(Authority: H.R. Rep. No. 660, 101st Cong., 1st Sess. 111(1990))

(16) The State will provide for such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State, including those funds paid by the State to eligible recipients under the Act;

(17) Funds made available under Title II of the Act will be used to supplement, and to the extend practicable increase, the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant those State or local funds;

Cross-Reference: See §§403.196 and 403.208.

(18) Individuals who are members of special populations will be provided with equal access to recruitment, enrollment, and placement activities;

(19) Individuals who are members of special populations will be provided with equal access to the full range of vocational education programs available to individuals who are not members of special populations, including occupationally specific courses of study, cooperative education, apprenticeship programs, and, to the extent practicable, comprehensive career guidance and counseling services, and will not be discriminated against on the basis of their status as members of special populations;

(20) Vocational education programs and activities for individuals with disabilities will be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA and will, if appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of that Act;

(21) Students with disabilities who have individualized education programs developed under section 614(a)(5) of the IDEA, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under section 612, 614, and 615 of that Act;

(22) Students with disabilities who do not have individualized education programs developed under section 614(a)(5) of the IDEA or who are not eligible to have such a program, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, for the purpose of the State Vocational and Applied Technology Education Programs, those rights and protections will include making vocational education programs readily accessible to eligible individuals with disabilities through the provision of services described §403.190(b)(3);

(23) Vocational education planning for individuals with disabilities will be coordinated among appropriate representatives of vocational education, special education, and State vocational rehabilitation agencies;

(24) The provision of vocational education to each student with disabilities will be monitored to determine if that education is consistent with the individualized education program developed for the student under section 614(a)(5) of the IDEA, in any case in which an individualized education program exists;

(25) The provision of vocational education will be monitored to ensure that disadvantaged students and students of limited English proficiency have access to that education in the most integrated setting possible;

(26)(i) The requirements of the Act relating to individuals who are members of special populations—

(A) Will be carried out under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for students who are members of special populations; and

(B) Will meet education standards of the State educational agency or State board;

(ii) With respect to students with disabilities, the supervision carried out under paragraph (a)(26)(i) of this section will be carried out consistent with, and in conjunction with, supervision by the State educational agency or State board carried out under section 612(6) of the IDEA;

(27) Funds received under the Business-Labor-Education Partnership for Training Program will be awarded on a competitive basis solely for vocational education programs, including programs that—

(i) Provide apprenticeships and internships in industry;

(ii) Provide new equipment;

(iii) Provide teacher internships or teacher training;

(iv) Bring representatives of business and organized labor into the classroom;

(v) Increase the access to, and quality of, programs for individuals who are members of special populations;

(vi) Strengthen coordination between vocational education programs and the labor and skill needs of business and industry;

(vii) Address the economic development needs of the area served by the partnership;

(viii) Provide training and career counseling that will enable workers to retain their jobs;

(ix) Provide training and career counseling that will enable workers to upgrade their jobs; and

(x) Address the needs of new and emerging industries, particularly industries in high-technology fields;

(28) In administering the Business-Labor-Education Partnership for Training Program, the State Board will—

(i) Give preference to partnerships that coordinate with local chambers of commerce (or the equivalent), local labor organizations, or local economic development plans;

(ii) Give priority to programs offered by partnerships that provide job training in areas or skills where there are significant labor shortages; and

(iii) Ensure an equitable distribution of assistance under this part between urban and rural areas;

(29) Except as provided in paragraph (a)(30) of this section, not less than 50 percent of the aggregate cost of programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources, and not less than 50 percent of the non-Federal share will be provided by businesses or labor organizations participating in the partnerships; and

(30) In the event that a partnership includes a small business or labor organization, 40 percent of the aggregate cost of the programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources and not less than 50 percent of the non-Federal share will be provided by participating businesses or labor organizations.

(b) *Descriptions.* To participate in programs authorized under the State Vocational and Applied Technology Education Program, the State must include the following descriptions in the State plan:

(1) The procedures and criteria for, and the results of, each of the assessments required by §403.203, including the needs identified by the assessments.

(2) The plans for the use of funds and how those planned uses reflect the needs described in paragraph (b) (1) of this section.

(3) The manner in which the State will comply with the requirements in the Act regarding access and services for individuals who are members of special populations and a description of the responsiveness of programs to the special needs of those students.

(4) The estimated distribution, for each instructional level—secondary, postsecondary, and adult—of funds to corrections educational agencies as prescribed by §403.100, of funds to local educational agencies, area vocational education schools, or intermediate educational agencies as prescribed by §§403.112 and 403.113, and of funds to eligible institutions as prescribed by §403.116.

(5) The criteria the State board will use—

(i) In approving applications of eligible recipients; and

(ii) For spending the amounts reserved for the State under §403.180(b).

(6) How funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis that is not limited to the area in which the school is located.

(Authority: H.R. Rep. No. 660, 101st Cong., 1st Sess 109 (1990))

(7) In each State plan submitted after Fiscal Year 1991, the progress the State has made in achieving the goals described in previous State plans.

(8) The methods of administration necessary for prompt and efficient administration of programs under the Act.

(9) How the State will implement program evaluations with eligible recipients as prescribed in §§403.191, 403.192, 403.201(a)(3) and (4), and 403.204.

(10) The methods proposed for joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act (20 U.S.C. 1201 *et seq.*), Chapter 1, the IDEA, and the Rehabilitation Act of 1973, and with apprenticeship programs.

(11) Procedures by which an area vocational educational school, intermediate educational agency, or local educational agency may appeal decisions adverse to its interests with respect to programs assisted under the Act.

Cross-reference: See 34 CFR 76.401

(12) How the State will comply with the provisions of §§403.32(a)(18)-(26), 403.115, and 403.205.

(13) The State's rationale for distribution of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs.

(14) The State corrections educational agency or agencies designated to administer vocational education programs assisted under the Act, and the plan for the use of funds provided under §403.180(b)(5).

(15) Any delegation of functions under §403.12(c).

(16) The manner in which the State board will comply with the applicable requirements of Titles I, II, III and V of the Act (including the maintenance of fiscal effort requirements in §403.182).

(17) A summary of recommendations made at public hearings on the State plan and the State board's response.

(18) How the State will determine which LEAs are located in a rural sparsely-populated area for purposes of §403.112(d)(3).

(19) Which indices of economic status the State will use to determine the number of economically disadvantaged students attending vocational educational programs for purposes of §403.114.

(20) What method the State will use to distribute minimal amounts for the purpose of §403.119(a).

(21) As appropriate, what method the State will use to distribute funds under §403.118.

(c) *Consultations.* A State desiring to participate in the State Vocational and Applied Technology Education Program shall include in its State plan—

(1) A statement, if any, from the State advisory council on vocational education reviewing and commenting on the State plan;

(2) As necessary, the State's reasons for not accepting the recommendations of the State Committee of Practitioners for modifying standards and measures to be used in the statewide system of core standards and measures of performance; and

(3) As necessary, the State's response to any objections raised by State agencies consulted during the development of the State plan as required by §403.31(e).

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2321(a)(2); 2322(e); 2323(a)(2)(B), (b); 2324(a), (d)(3); 2328(a); 2336(a)(1); 2341(b)(2), (d)(3); 2341b(a); 2392(b); 2463; and 2466e(a)(1))

§403.33 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan.

(b) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

Cross-reference: See §403.19(c)(1)(iii).

(c) Each State plan must be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which the plan is to be in effect.

(d) The State plan is considered to be the general application required by section 435 of the General Education Provisions Act (20 U.S.C. 1232d).

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2322(d)(1) and (2)(A), (e); 2323(a)(2)(A); and 2324(b)).

§403.34 When are amendments to the State plan required?

The State board, in consultation with the State council, shall submit amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding or other factors require substantial amendment of an approved State plan. All amendments must be submitted for review by the State job training coordinating council and the State council on vocational education before submittal to the Secretary.

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2323(c))

Subpart D—How Does the Secretary Make a Grant to a State?

§403.50 How does the Secretary make allotments?

(a)(1) From funds made available under section 3(c) of the Act for the basic programs listed in §403.60, and under section 3(d) of the Act for special programs listed in §403.130, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act to the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to a State.

(b)(1) From funds made available under sections 3(b)(2) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provision of section 112(f)(1) of the Act.

(2) The Secretary makes an award to a State council upon the State council's submission of an annual budget covering the proposed expenditures of the State council for the following program year, and when the Secretary has determined that the State plan is in substantially approvable form.

(c) From funds made available under section 3(b)(1)(B) of the Act for the territories, the Secretary allots funds each fiscal year according to the provisions of section 101A(a) of the Act.

(d)(1) The Secretary awards funds remaining after allotments are made under paragraph (c) of this section to the Center for the Advancement of Pacific Education (CAPE) or its successor entity, such as the Pacific Regional Educational Laboratory.

(2) CAPE or its successor shall make grants for vocational education and training in Guam, American Samoa, Palau, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, and the republic of the Marshall Islands for the purpose of providing direct educational services, including—

(i) Teacher and counselor training and retraining;

(ii) Curriculum development; and

(iii) Improving vocational education and training programs in secondary schools and institutions of higher education (as defined in §403.117(b)), or improving cooperative programs involving both secondary schools and institutions of higher education.

(3) CAPE may not use more than five percent of the funds received under paragraph (d)(1) of this section for administrative costs.

(Authority: 20 U.S.C. 2311; 2311a; and 2461)

§403.51 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under §403.50(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the *Federal Register* the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purpose for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds were obligated.

(Authority: 20 U.S.C. 2311(b))

§403.52 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, within sixty days of its receipt unless the plan or amendment is—

(i) Inconsistent with the requirements and purposes of the Act; or

(ii) Not of sufficient quality to meet the objectives of the Act, including the objective of developing and implementing program evaluations and improvements.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b)(1) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from—

(i) The State council on vocational education;

(ii) The State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocation education;

(iii) The State agency responsible for secondary education;

(iv) The State Committee of Practitioners established under 34 CFR 400.6; and

(v) The State job training coordinating council.

(2) In reviewing an amendment to a State plan, the Secretary considers available comments from the State job training coordinating council and the State council on vocational education.

(Authority: 20 U.S.C. 2323(c), 2324, and 2325(d)(3))

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

§403.60 What are the basic programs?

The following basic programs are authorized by Title II of the Act:

(a) State Programs and State Leadership Activities.

(b) Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(c) Sex Equity Programs.

(d) Programs for Criminal Offenders.

(e) Secondary School Vocational Education Programs.

(f) Postsecondary and Adult Vocational Education Programs.

(Authority: 20 U.S.C. 2302)

§403.61 What projects, services, and activities are permissible under the basic programs?

Projects, services, and activities described in §§403.70, 403.71, 403.81, 403.91, 403.101, and 403.111 may include—

(a) Work-site programs such as cooperative vocational education, programs with community-based organizations, work-study, and apprenticeship programs;

(b) Placement services and activities for students who have successfully completed vocational education programs; and

(c) Programs that involve students in addressing the needs of the community in the production of goods or services that contribute to the community's welfare or that involve the students with other community development planning, institutions, and enterprises.

(Authority: 20 U.S.C. 2468e(c))

§403.62 What administrative provisions apply?

(a) Any project assisted with funds made available for the basic programs must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.

(b) Each State board receiving financial assistance for the basic programs may consider granting academic credit for vocational education courses that integrate core academic competencies.

(Authority: 20 U.S.C. 2468e (b) and (d))

§403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational and Applied Technology Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions, such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly if it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for statewide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational and Applied Technology Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, employers, private vocational training institutions, private postsecondary education institutions, labor organizations, and joint labor management apprenticeship programs.

(d) If projects, services, and activities are carried out by a school operated by the State board under paragraph (a)(2) of this section or are carried out by a State agency or institution under paragraph (a)(3) of this section, the requirements dealing with local applications (§§403.190 and 403.32(b)(5)(i)) apply in the same manner as to other eligible recipients.

(Authority: 20 U.S.C. 2323(b)(5), (6); 2335(a)(3); 2335b; 2342(c)(2)(N); and 2343)

State Programs and State Leadership Activities

§403.70 How must funds be used under the State Programs and State Leadership Activities?

A State shall use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with §403.180(b)(3) to conduct programs, projects, services, and activities that include—

(a) Professional development activities—

(1) For vocational teachers and academic teachers working with vocational education students, including corrections educators and counselors and educators and counselors in community-based organizations; and

(2) That include inservice and preservice training of teachers in programs and techniques, including integration of vocational and academic curricula, with particular emphasis on training of minority teachers;

(b) Development, dissemination, and field testing of curricula, especially curricula that—

(1) Integrate vocational and academic methodologies; and

(2) Provide a coherent sequence of courses through which academic and occupational skills may be measured; and

(c) Assessment of programs conducted with assistance under the Act including the development of—

(1) Performance standards and measures for those programs; and

(2) Program improvement and accountability with respect to those programs.

(Authority: 20 U.S.C. 2331(b))

§403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

In addition to the required activities in §403.70, a State may use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with §403.180(b)(3) for programs, projects, services, and activities that include—

(a) The promotion of partnerships among business, education (including educational agencies), industry, labor, community-based organizations, or governmental agencies;

(b) The support for tech-prep education as described in 34 CFR Part 406;

(c)(1) The support of vocational student organizations that are an integral part of the vocational education instructional program, especially with respect to efforts to increase minority participation in those organizations.

(2) The support of vocational student organizations may include, but is not limited to, expenditures for—

(i) The positions of State executive secretaries and State advisors for vocational student organizations;

(ii) Leadership development workshops;

(iii) The development of curriculum for vocational student organizations; and

(iv) Field or laboratory work incidental to vocational training so long as the activity is supervised by vocational education personnel who are qualified in the occupational area and is available to all students in the instructional program without regard to membership in any student organization.

(3) The support of vocational student organizations may not include—

(i) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(ii) Purchase of supplies, jackets, and other effects for students' personal ownership;

(iii) Cost of non-instructional activities such as athletic, social, or recreational events;

(iv) Printing and disseminating non-instructional newsletters;

(v) Purchase of awards for recognition of students, advisors, and other individuals; or

(vi) Payment of membership dues;

(d) Leadership and instructional programs in technology education; and

(e) Data collection.

(Authority: 20 U.S.C. 2331(c); H.R. Rep. No. 660, 101st Cong., 1st Sess. 117 (1990))

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

§403.80 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program.

(Authority: 20 U.S.C. 2335(a)(2), (3); 2335b(1))

§403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?

A State shall use funds reserved in accordance with §403.180(b)(2)(i) for individuals who are single parents, displaced homemakers, or single pregnant women only to—

(a) Provide, subsidize, reimburse, or pay for preparatory services, including instruction in basic academic and occupational skills, necessary educational materials, and career guidance and counseling services in preparation for vocational education and training that will furnish single parents, displaced homemakers, and single pregnant women with marketable skills;

(b) Make grants to eligible recipients for expanding preparatory services and vocational education services if the expansion directly increases the eligible recipients' capacity for providing single parents, displaced homemakers, and single pregnant women with marketable skills;

(c) Make grants to community-based organizations for the provision of preparatory and vocational education services to single parents, displaced homemakers, and single pregnant women if the State determines that the community-based organizations have demonstrated effectiveness in providing comparable or related services to single parents, displaced homemakers, and single pregnant women, taking into account the demonstrated performance of such organizations in terms of cost, the quality of training, and the characteristics of the participants;

(d) Make preparatory services and vocational education and training more accessible to single parents, displaced homemakers, and single pregnant women by assisting those individuals with dependent care, transportation services, or special services and supplies, books, and materials, or by organizing and scheduling the programs so that those programs are more accessible; or

(e) Provide information to single parents, displaced homemakers, and single pregnant women to inform those individuals of vocational education programs, related support services, and career counseling.

(Authority: 20 U.S.C. 2335(a))

§403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

The programs and services described in §403.81 may be provided in postsecondary or secondary school settings, including area vocational education schools, and community-based organizations that meet the requirements of §403.81(c), that serve single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2335(b))

Sex Equity Program

§403.90 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Sex Equity Program.

(Authority: 20 U.S.C. 2335b(1))

§403.91 How must funds be used under the Sex Equity Program?

Except as provided in §403.92, each State shall use amounts reserved for the Sex Equity Program in accordance with §403.180(b)(2)(ii) only for—

(a) Programs, services, comprehensive career guidance and counseling, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education;

(b) Preparatory services and vocational education programs, services, and activities for girls and women, aged 14 through 25, designed to enable the participants to support themselves and their families; and

(c) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a) and (b) of this section, including dependent-care services and transportation.

(Authority: 20 U.S.C. 2335a(a))

§403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

The individual appointed under §403.13(a) may waive the requirement in §403.91(b) with respect to age limitations if the individual determines (through appropriate research) that the waiver is essential to meet the objectives of §403.91.

(Authority: 20 U.S.C. 2335a(b))

Programs for Criminal Offenders

§403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?

(a) The State Board shall designate one or more State corrections educational agencies to administer programs assisted under the Act for juvenile and adult criminal offenders in correctional institutions in the State including correctional institutions operated by local authorities.

(b) Each State corrections educational agency that desires to be designated under paragraph (a) of this section shall submit to the State board a plan for the use of funds.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2336(a))

§403.101 How must funds be used under the Programs for Criminal Offenders?

In administering programs receiving funds reserved under §403.180(b)(5) for criminal offenders, each State corrections educational agency designated under §403.100(a) shall—

(a) Give special consideration to providing—

(1) Services to offenders who are completing their sentences and preparing for release; and

(2) Grants for the establishment of vocational education programs in correctional institutions that do not have such programs;

(b) Provide vocational education programs for women who are incarcerated;

(c) Improve equipment; and

(d) In cooperation with eligible recipients, administer and coordinate vocational education services to offenders before and after their release.

(Authority: 20 U.S.C. 2336(b))

§403.102 What other requirements apply to the Program for Criminal Offenders?

Each State corrections educational agency designated under §403.100(a) shall meet the requirements in §§403.191 and 403.192.

(Authority: 20 U.S.C. 2471(22))

Secondary, Postsecondary, and Adult Vocational Education Programs

§403.110 Who is eligible for a subgrant or contract?

(a) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Secondary School Vocational Education Program:

(1) A local educational agency.

(2) An area vocational education school or intermediate educational agency that meets the requirements in §403.113.

(b) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Postsecondary and Adult Vocational Education Programs:

(1) An institution of higher education as defined in §403.117(b), including a nonprofit institution that satisfies the conditions set forth in §403.111(d)(14).

(2) A local educational agency serving adults.

(3) An area vocational education school serving adults that offers or will offer a program that meets the requirements of §403.111 and seeks to receive assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs.

(c) Only an entity that provides or will provide vocational education in a program that meets the requirements of §403.111 is eligible to receive an award under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(Authority: 20 U.S.C. 2341(a) and (d); 2341a(a) and (d)(1); and 2342(c))

§403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a)(1) Each eligible recipient that receives an award under §§403.112, 403.113, or 403.116 shall use funds under that award to improve vocational education programs.

(2) Projects assisted with funds awarded under §§403.112, 403.113, or 403.116 must—

(i) Provide for the full participation of individuals who are members of special populations by providing the supplementary and other services required by §403.190(b) necessary for them to succeed in vocational education; and

Cross-Reference: See Appendix A to Part 403 and §§403.190(c) and 403.193(e).

(ii) Operate at a limited number of sites or with respect to a limited number of program areas.

(3) If an eligible recipient that receives an award under §§403.112, 403.113, or 403.116 meets the requirements in this section and §§403.190(b) and 403.193, it may use those Federal funds to serve students who are not members of special populations.

(b) Each eligible recipient that receives an award under §§403.112, 403.113, or 403.116 shall give priority for assistance under those sections to sites or program areas that serve the highest concentrations of individuals who are members of special populations.

Examples: Methods by which an eligible recipient may give priority to sites or program areas that serve the highest concentrations of individuals who are members of special populations include, but are not limited to, the following:

Example 1: *Method to give priority to a limited number of sites.* Based on data from the preceding fiscal year—

(a) First, a local educational agency ranks each site based on the percentage of the site's total enrollment of students who are members of special populations.

(b) Second, the local educational agency establishes a funding cut-off point for sites above the district-wide percentage of special populations enrollment. The local educational agency funds sites above the cut-off point but does not fund sites below that point.

Example 2: *Method to give priority to a limited number of program areas.* Based on data from the preceding fiscal year—

(a) First, a postsecondary institution ranks each program area based on the percentage of the program area's total enrollment of students who are members of special populations.

(b) Second, the postsecondary institution establishes a funding cut-off point for program areas that rank above the institution-wide average percentage of special populations enrollment. The postsecondary institution funds projects in a program area that is above the cut-off point but does not fund projects in program areas below that point.

Example 3: *Method to give priority to a limited number of sites.* Based on data from the preceding fiscal year—

(a) First, an LEA or postsecondary institution identifies a site with a high concentration of special populations;

(b) Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations has been lower than the overall rate of participation for members of special populations at the site; and

(c) Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

Note to examples in §403.111: Absolute counts of special population members may be used to determine the sites or program areas with the highest concentrations of special population members instead of, or in combination with, percentages of special population members.

(c) Funds made available from an award under §§403.112, 403.113, or 403.116 must be used to provide vocational education in programs that—

(1) Are of sufficient size, scope, and quality as to be effective;

(2) Integrate academic and vocational education in those programs through coherent sequences of courses so that students achieve both academic and occupational competencies; and

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in §§403.190(b) and 403.193, so that these populations have an opportunity to enter vocational education that is equal to that afforded to the general student population.

Cross-Reference: See Appendix A to Part 403.

(d) In carrying out the provisions of paragraph (c) of this section, an eligible recipient under §§403.112, 403.113, or 403.116 may use funds for activities that include, but are not limited to—

(1) Upgrading of curriculum;

(2) Purchase of equipment, including instructional aids;

(3) Inservice training of both vocational instructors and academic instructors working with vocational education students for integrating academic and vocational education;

(4) Guidance and counseling;

(5) Remedial courses;

(6) Adaptation of equipment;

(7) Tech-prep education programs;

(8) Supplementary services designed to meet the needs of special populations;

(9) Payment in whole or in part with funds under §§403.112, 403.113, or 403.116 for a special populations coordinator, who must be a qualified counselor or teacher, to ensure that individuals who are members of special populations are receiving adequate services and job skill training;

(10) Apprenticeship programs;

(11) Programs that are strongly tied to economic development efforts in the State;

(12) Programs that train adults and students for all aspects of an occupation in which job openings are projected or available;

(13) Comprehensive mentor programs in institutions of higher education offering comprehensive programs in teacher preparation, which seek to use fully the skills and work experience of individuals currently or formerly employed in business and industry who are interested in becoming classroom instructors and to meet the need of vocational educators who wish to upgrade their teaching competencies; or

(14) Provision of education and training through arrangements with private vocational training institutions, private postsecondary educational institutions, employers, labor organizations, and joint labor-management apprenticeship programs if those institutions, employers, labor organizations, or programs can make a significant contribution to obtaining the objectives of the State plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

(Authority: 20 U.S.C. 2342)

§403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?

(a) *Reservation of funds.* From the portion of its allotment under §403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Secondary School Vocational Education Program.

(b) *General rule.* Except as provided in paragraphs (c) and (d) of this section and §401.119, a State shall distribute funds reserved for the Secondary School Vocational Education Program to local educational agencies (LEAs) according to the following formula:

(1) From 70 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 70 percent as the amount the LEA was allocated under section 1005 of Chapter 1 (20 U.S.C. 2711) in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total amount received under section 1005 of Chapter 1 by all LEAs in the State in that preceding year.

(2) From 20 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 20 percent as the number of students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA served by the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total number of those students served by all LEAs in the State in that preceding year.

(3) From 10 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 10 percent as the number of students enrolled in schools and adults enrolled in vocational education training programs under the jurisdiction of the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of students enrolled in schools in kindergarten through 12th grade and adults enrolled in vocational education training programs under the jurisdiction of all LEAs in the State in that preceding year.

Example: Assume that a State has reserved $5,000,000 of its basic programs funds under Title II of the Act for secondary school programs.

(a)(1) All LEAs in the State were allocated a total of $80,000,000 under section 1005 of Chapter 1 in the preceding fiscal year. Of that amount, school district *A* was allocated $400,000.

(2) The allocation for school district *A* is calculated by multiplying $3,500,000 (70 percent of $5,000,000) by .005 of the State total ($400,000 $80,000,000). The allocation for school district *A* would be $17,500 under paragraph (b)(1) of this section.

(b)(1) All LEAs in a State served a total of 100,000 students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA in the preceding fiscal year. Of that total, school district *A* served 400 of those students in the preceding fiscal year.

(2) The allocation for school district *A* is calculated by multiplying $1,000,000 (20 percent of $5,000,000) by .004 of the State total (400 100,000). The allocation for school district *A* would be $4,000 under paragraph (b)(2) of this section.

(c)(1) All LEAs in a State enrolled a total of 1,000,000 students (including adults enrolled in vocational education training programs in those LEAs) in the preceding fiscal year. Of that number school district *A* enrolled 3,500 of those students in the preceding fiscal year.

(2) The allocation for school district *A* is calculated by multiplying 500,000 (10 percent of $5,000,000) by .0035 of the State total (3,500 1,000,000). The allocation for school district *A* would be $1,750 under paragraph (b)(3) of this section.

(c) *Exception to the general rule.* In applying the provisions in paragraph (b) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (b) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(d)(1) *Minimum grant amount.* Except as provided in paragraph (d)(3) of this section, an LEA is not eligible for a grant under the Secondary School Vocational Education Program unless the amount allocated to the LEA under paragraph (b) of this section is not less than $15,000.

(2)(i) An LEA may enter into a consortium with one or more LEAs for the purpose of providing services under the Secondary School Vocational Education Program in order to meet the minimum grant requirement in paragraph (d)(1) of this section.

(ii) A consortium arrangement under paragraph (d)(2)(i) of this section must serve primarily as a structure for operating joint projects that provide services to all participating local educational agencies.

(iii) A project operated by a consortium must meet the size, scope, and quality requirement of §403.111(c)(1).

Example: Under the distribution formula for the Secondary School Vocational Education Program, three LEAs earn $5,000 each (which is less than the $15,000 minimum grant amount for each LEA). The LEAs form a consortium in order to receive an award. One of the LEAs is designated as the fiscal agent for the consortium and receives the $15,000 award for the consortium. The consortium may operate and fund with the $15,000 a project or projects for the benefit of all participating LEAs. The fiscal agent of the consortium may not subgrant back to the participating LEAs the amounts they contributed to the consortium.

(3) A State may waive paragraph (d)(1) of this section in any case in which the LEA—

(i) Is located in a rural, sparsely populated area;

(ii) Demonstrates that it is unable to enter into a consortium for purposes of providing services under the Secondary School Vocational Education Program; and

(iii) Demonstrates that the projects to be assisted meet the size, scope, and quality requirements in §403.111(c)(1).

(4) Any amounts that are not distributed by reason of paragraph (d)(1) of this section must be redistributed in accordance with the provisions in paragraph (b) of this section.

Cross-Reference: See 34 CFR 403.113(d).

(Authority: 20 U.S.C. 2341(a), (b), and (c))

§403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?

(a) A State shall distribute funds reserved under §403.112(a) directly to the appropriate area vocational education school or intermediate educational agency in any case in which—

(1) The area vocational education school or intermediate educational agency and an LEA—

(i) Have formed or will form a consortium for the purpose of receiving funds reserved under §403.112(a); or

(ii) Have entered into or will enter into a cooperative arrangement for the purpose of receiving funds reserved under §403.112(a); and

(2)(i) The area vocational education school or intermediate educational agency serves a proportion of students with disabilities and students who are economically disadvantaged that is approximately equal to or greater than the proportion of those students attending the secondary schools under the jurisdiction of all of the LEAs sending students to the area vocational education school or the intermediate educational agency; or

(ii) The area vocational education school or intermediate educational agency demonstrates that it is unable to meet the criterion in paragraph (a)(2)(i) of this section due to the lack of interest by students with disabilities and students who are economically disadvantaged in attending vocational education programs in that area vocational education school or intermediate educational agency.

(b) If an area vocational education school or intermediate educational agency meets the requirements of paragraph (a) of this section, then the amount that would otherwise be allocated to the LEA may be distributed to the area vocational education school, the intermediate educational agency, and the LEA—

(1) Based on each school's or entity's relative share of students with disabilities and students who are economically disadvantaged who are attending vocational education programs that meet the requirements of §403.111 (based, if practicable, on the average enrollment for the prior 3 years); or

(2) On the basis of an agreement between the LEA and the area vocational education school or intermediate educational agency.

(c) Notwithstanding paragraphs (a) and (b) of this section, and §§403.114 and 403.115, prior to distributing funds to any LEA that would receive an allocation that is not sufficient to conduct a program that meets the requirements of §403.111(c), a State shall encourage the LEA to —

(1) Form a consortium or enter a cooperative agreement with an area vocational education school or intermediate educational agency offering programs that meet the requirements of §403.111(c), and that are accessible to economically disadvantaged students and students with disabilities that would be served by the LEA; and

(2) Transfer its allocation to an area vocational education school or intermediate educational agency.

(d) If an LEA's allocation under §403.112 meets the minimum grant requirement in §403.112(d), and the allocation is distributed in part to an area vocational education school or an intermediate educational agency pursuant to paragraphs (a) and (b) of this section, the LEA may retain the amount not distributed to the area vocational education school or an intermediate educational agency even though that amount is less than the minimum grant required by §403.112(d).

(Authority: 20 U.S.C. 2341(d)(1), (2), and (5))

§403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?

(a) For the purposes of §403.113, a State may determine the number of economically disadvantaged students attending vocational education programs on any of the following bases:

(1) Eligibility for one of the following:

(i) Free or reduced-price meals under the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(ii) The program for aid to Families with Dependent Children under Part A of Title IV of the Social Security Act (42 U.S.C. 601).

(iii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iv) To be counted for purposes of section 1005 of Chapter 1.

(v) Participation in programs assisted under Title II of the JTPA.

(2) Receipt of a Pell grant or assistance under a comparable State program of need-based financial assistance.

(3) Status of an individual who is determined by the Secretary to be low-income according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

(4) Other indices of economic status, including estimates of those indices, if the State demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(b) If a State elects to use more than one factor described in paragraph (a) of this section for purposes of determining the number of economically disadvantaged students enrolled in vocational education programs, the State shall ensure that the data used are not duplicative.

(Authority: 20 U.S.C. 2341(d)(3) and 2471(15))

§403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?

The State board shall establish an appeals procedure for resolution of any dispute arising between an LEA and an area vocational education school or an intermediate educational agency with respect to the allocation procedures described in §§403.112 and 403.113, including the decision of an LEA to leave a consortium.

Cross-Reference: See 34 CFR 76.401, Disapproval of an application—opportunity for a hearing.

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2341(d)(4))

§403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?

(a) *Reservation of funds.* From the portion of its allotment under §403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Postsecondary and Adult Vocational Education Programs.

(b) *General rule.*

(1) A State shall distribute funds reserved for Postsecondary and Adult Vocational Education Programs to eligible institutions within the State.

(2) Except as provided in paragraph (c) of this section and §§403.118 and 403.119, each eligible institution must receive an amount that bears the same relationship to the amount of funds reserved for the Postsecondary and Adult Vocational Education Programs as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of §403.111, including meeting the definition of vocational education in 34 CFR 400.4, offered by the eligible institution in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of those recipients enrolled in these programs within the State in that preceding year.

(c) *Minimum grant amount.*

(1) A State may not provide a grant under paragraph (b) of this section to any institution for an amount that is less than $50,000.

(2) Any amounts that are not allocated by reason of paragraph (c)(1) of this section must be redistributed to eligible institutions in accordance with the provisions of paragraph (b) of this section.

(Authority: 20 U.S.C. 2341a(a) and (c))

§403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?

For the purposes of §§403.116, 403.118, and 403.120 the following definitions apply:

(a) *Eligible institution* means an institution of higher education, an LEA serving adults, or an area vocational education school serving adults that offers or will offer a program that meets the requirements of §403.111 and seeks to receive assistance under §403.116.

(b)(1) *Institution of higher education* means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate, or who are beyond the age of compulsory school attendance;

(ii) Is legally authorized within the State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, or in the case of a hospital or health care facility, that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of that training;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose or, if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions that are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) This term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (b)(1)(i), (ii), (iv), and (v) of this definition. If the Secretary determines that a particular category of these schools does not meet the requirements of paragraph (b)(1)(v) because there is no nationally recognized accrediting agency or association qualified to accredit schools in that category, the Secretary, pending the establishment of such an accrediting agency or association, appoints an advisory committee, composed of persons specially qualified to evaluate training provided by schools in that category, that must—

(i) Prescribe the standards of content, scope, and quality that must be met in order to qualify schools in that category to participate in the program pursuant to this part; and

(ii) Determine whether particular schools not meeting the requirements of paragraph (b)(1)(v) of this definition meet those standards.

(Authority: 20 U.S.C. 1085)

(c) *Pell Grant recipient* means a recipient of financial aid under Subpart 1 of Part A of Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a-1 *et seq.*).

(Authority: 20 U.S.C. 2341a(d))

§403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?

The Secretary may waive §403.116(b)(2) for any fiscal or program year for which a State submits to the Secretary an application for such a waiver that—

(a) Demonstrates that the formula in §403.116(b)(2) does not result in a distribution of funds to the institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula would result in such a distribution.

(b) Includes a proposal for an alternative formula that may include criteria relating to the number of individuals attending institutions within the State who—

(1) Receive need-based postsecondary financial aid provided from public funds;

(2) Are members of families participating in the program for aid to families with dependent children under Part A of Title IV of the Social Security Act (42 U.S.C. 601);

(3) Are enrolled in postsecondary educational institutions that—

(i) Are funded by the State;

(ii) Do not charge tuition; and

(iii) Serve only economically disadvantaged students;

(4) Are enrolled in programs serving economically disadvantaged adults;

(5) Are participants in programs assisted under the JTPA;

(6) Are Pell Grant recipients; and

(c) Proposes an alternative formula that—

(1) Includes direct counts of students enrolled in the institutions;

(2) Directly relates to the status of students as economically disadvantaged individuals;

(3) Is to be uniformly applied to all eligible institutions;

(4) Does not include fund pools for specific types of institutions;

(5) Does not include the direct assignment of funds to a particular institution on a non-formula basis; and

(6) Identifies a more accurate count of economically disadvantaged individuals in the aggregate than does the formula in §403.116(b)(2).

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(Authority: 20 U.S.C. 2341a(b))

§403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?

(a) This section applies in any fiscal or program year in which a State reserves 15 percent or less under §403.180(b)(1) for distribution under—

(1) The Secondary School Vocational Education Program; or

(2) The Postsecondary and Adult Vocational Education Programs.

(b) Notwithstanding the provisions and §§403.112, 403.113, or 403.116, as applicable, in order to result in a more equitable distribution of funds for programs serving the highest numbers of economically disadvantaged individuals, the State may distribute the funds described in paragraph (a) of this section—

(1) On a competitive basis; or

(2) Through any alternative method determined by the State.

(Authority: 20 U.S.C. 2341b)

§403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a) In any fiscal or program year that an LEA, area vocational school, intermediate school district, or eligible institution does not obligate all of the amounts it is allocated for that year under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs, the LEA, area vocational education school, intermediate school district, or eligible institution shall return any unobligated amounts to the State to be reallocated under §§403.112(b), 403.113, or 403.116(b), as applicable.

(b) In any fiscal or program year in which amounts allocated under §§403.112(b), 403.113, 403.116(b), or 403.118 are returned to the State and the State is unable to reallocate those amounts according to those sections in time for the amounts to be obligated in the fiscal or program year, the State shall retain the amounts to be distributed in combination with amounts reserved under §§403.112(b), 403.113, 403.116(b), or 403.118 for the following fiscal or program year.

(Authority: 20 U.S.C. 2341c)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

§403.130 What are the Special Programs?

The following special programs are authorized by Title III of the Act and are subject to the requirements of the State plan:

(a) State Assistance for Vocational Education Support Programs by Community-Based Organizations.

(b) Consumer and Homemaking Education Program.

(c) Comprehensive Career Guidance and Counseling Programs.

(d) Business-Labor-Education Partnerships for Training Program.

(Authority: 20 U.S.C. 2302(d)(A)-(D))

§403.131 Who is eligible for an award under the Special Programs?

(a) The fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands are eligible for an award under the—

(1) State Assistance for Vocational Education Support and Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Programs; and

(3) Comprehensive Career Guidance and Counseling Programs.

(b) States, as defined in 34 CFR 400.4(b), are eligible for the Business-Labor-Education Partnerships for Training Program.

(Authority: 20 U.S.C. 2302(d)(A)-(D))

Vocational Education Support Programs by Community-based Organizations

§403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) Model programs for school dropouts.

(7) The assessment of students' needs in relation to vocational education and jobs.

(8) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Individuals with disabilities who are educationally or economically disadvantaged may participate in projects under this program.

(Authority: 20 U.S.C. 2352, 2471(6))

§403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board also may establish requirements relating to the contents of the applications, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served that includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2351)

Consumer and Homemaking Education Programs

§403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Individual and family health;

(iii) Consumer education;

(iv) Family living and parenthood education;

(v) Child development and guidance;

(vi) Housing and home management, including resource management; and

(vii) Clothing and textiles.

(b) The State shall use the funds for this program for projects, services, and activities—

(1) For residents of economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage, in cooperation with the individual appointed under §403.13(a), the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update Consumer and Homemaking Education Programs, especially those that specifically address needs described in paragraphs (b)(1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Balancing work and family;

(iv) Improving responses to individual and family crises (including family violence and child abuse);

(v) Strengthening parenting skills (especially among teenage parents);

(vi) Preventing teenage pregnancy;

(vii) Assisting the aged, individuals with disabilities, and members of at risk populations (including the homeless);

(viii) Improving individual, child, and family nutrition and wellness;

(ix) Conserving limited resources;

(x) Understanding the impact of new technology on life and work;

(xi) Applying consumer and homemaking education skills to jobs and careers; and

(xii) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision;

(xi) State leadership, including the activities of student organizations; and

(xii) State administration, subject to §403.151(c).

(Authority: 20 U.S.C. 2361, 2362(a), (b))

§403.151 How must funds be used under the Consumer and Homemaking Education Programs?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve the home environment and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership and one or more full-time State administrators qualified by experience and educational preparation in home economics education.

(3) For purposes of the Consumer and Homemaking Education Program, State leadership includes, but is not limited to, curriculum development, personnel development, research, dissemination activities, and technical assistance.

(c) A State may use, in addition to funds reserved under §403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2362(c), 2363)

Comprehensive Career Guidance and Counseling Programs

§403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

(a) The State shall conduct, in accordance with its State plan, from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decision-making, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education, and job training; and

(2)(i) Encourage the elimination of sex, age, disabling conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, individuals with disabilities, and economically disadvantaged individuals.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and counseling projects such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership;

(ix) The development of career information delivery systems; and

(x) Local administration, including supervision;

(xi) State administration, including supervision, subject to §403.161(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act (29 U.S.C. 50);

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: 20 U.S.C. 2382(a), (b))

§403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under §403.160(b)(2) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, individuals with disabilities, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(3) For purposes of Comprehensive Career Guidance and Counseling Programs, State leadership includes, but is not limited to curriculum development, personnel development, research, dissemination activities, and technical assistance; and

(c) A State may use, in addition to funds reserved under §403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2382(c), 2383)

Business-Labor-Education Partnership for Training Program

§403.170 What activities does the Secretary support under the Business-Labor- Education Partnership for Training Program?

The State board shall, in accordance with the State plan, from its allotment for this program, support the establishment and operation of projects, services, and activities, that—

(a) Provide incentives for the coordination of the Business-Labor-Education Partnership for Training Program with related efforts under the—

(1) National Tech-Prep Education Program in 34 CFR Part 405;

(2) State-Administered Tech-Prep Education Program in 34 CFR Part 406; and

(3) JTPA; and

(b) May only include, in addition to the activities described in §403.32(a)(27) through (30),—

(1) Training and retraining of instructional and guidance personnel;

(2) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(3) Acquisition and operation of communications and telecommunications equipment and other high-technology equipment for programs authorized by this part;

(4) Other activities authorized by Title III of the Act as may be essential to the successful establishment and operation of projects, services, and activities under the Business-Labor-Education Partnership for Training Program, including activities and related services to ensure access of women, minorities, individuals with disabilities, and economically disadvantaged individuals; and

(5) Providing vocational education to individuals in order to assist their entry into, or advancement in, high technology occupations or to meet the technological need of other industries or businesses.

(Authority: 20 U.S.C. 2392(b) and 2393(a), (d)(1))

§403.171 Who is eligible to apply to a State board for an award?

(a) The State board awards subgrants or contracts to partnerships between—

(1) An area vocational education school, a State agency, a local educational agency, a secondary school funded by the Bureau of Indian Affairs, an institution of higher education, a State corrections educational agency, or an adult learning center; and

(2) Business, industry, labor organizations, or apprenticeship programs.

(b) A partnership receiving an award from a State board must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2392(a)(1))

§403.172 What special considerations must the State board give in approving projects, services, and activities?

The State board, in approving projects, services, and activities assisted under the Business-Labor-Education Partnership Training Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the program.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the program is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability of successful completion of the program by prospective trainees and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve, as demonstrated by special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance, all segments of the population, including women, minorities, individuals with disabilities, and economically disadvantaged individuals.

(e) Projects, services, and activities to provide vocational education for individuals who have attained 55 years of age in order to assist their entry into, or advancement in, high technology occupations or to meet the technological needs of other industries or businesses.

(Authority: 20 U.S.C. 2393(b) and (d)(2))

§403.173 What expenses are allowable?

The State board shall use funds awarded under the Business-Labor-Education Partnership for Training Program only for—

(a) Expenses incurred in carrying out the programs, services, and activities described in §403.170, including, for example, expenses for—

(1) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(2) The introduction or improvement of basic skills instruction, including English-as-a-second-language instruction, in order for an individual to be eligible for employment, to continue employment, or to be eligible for career advancement;

(3) Costs associated with coordination between vocational education programs,

business, and industry, including advisory council meetings and newsletters; and

(4) Transportation and child-care services for students necessary to ensure access of women, minorities, individuals with disabilities, and economically disadvantaged individuals to projects, services, and activities authorized by the Business-Labor-Education Partnership for Training Program; and

(b)(1) Subject to paragraph (b)(2) of this section, expenditures for necessary and reasonable administrative costs of the State board and of eligible partners.

(2) Total expenditures for administrative costs of the State board and of eligible partners may not exceed 10 percent of the State's allotment for this program in the first year and five percent of that allotment in each subsequent year.

(Authority: 20 U.S.C. 2392(d) and 2393(a)(1))

§403.174 What additional fiscal requirements apply to the Business-Labor- Education Partnership for Training Program?

(a) The business and industrial share of the costs required in §403.32(a)(29) may be in the form of either allowable costs or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(b) The State board shall use equal amounts from its allotment under this program and from its allotment for basic programs to provide the Federal share of cost of projects, services, and activities under this program.

(c) If an eligible partner demonstrates to the satisfaction of the State that it is incapable of providing all or part of the non-Federal portion of the costs of projects, services, and activities, as required by §403.32(a)(29), the State board may designate funds available under Parts A and C of Title II of the Act or funds available from State sources in place of the non-Federal portion.

(Authority: 20 U.S.C. 2392(c))

Subpart G—What Financial Conditions Must Be Met by a State?

§403.180 How must a State reserve funds for the basic programs?

(a)(1) Except as provided in paragraph (a)(2) of this section, each State shall reserve from its allotment under the basic programs authorized by Title II of the Act, for—

(i) The Program for Single Parents, Displaced Homemakers, and Single Pregnant Women under §403.81, and the Sex Equity Program under §403.91, respectively, an amount that is not less than the amount the State reserved for each of those programs under section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA) from its Fiscal Year (FY) 1991 grant from the FY 1990 appropriation; and

(ii) The Program for Criminal Offenders under §403.101 an amount that is not less than—

(A) The amount the State reserved for projects, services, or activities under section 202(6) of the CDPVEA from its FY 1991 grant from the FY 1990 appropriation; and

(B) The amount of Federal funds under the CDPVEA, other than the one percent reserved under section 202(6) of the Act, that the State and its eligible recipients obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriation.

(2) In any year in which a State receives an amount for purposes of carrying out programs under Title II of the Act that is less than the amount the State received for those purposes in its FY 1991 grant award from the FY 1990 appropriation under the CDPVEA, the State shall ratably reduce the amounts reserved under paragraph (a)(1) of this section in the same proportion that the amount for carrying out programs under Title II of the Act is less than the amount the State received for those purposes from the FY 1990 appropriation.

(b) Except as provided in paragraph (a) of this section, from its allotment for the basic programs authorized by Title II of the Act, a State shall reserve —

(1) At least 75 percent for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs described in §403.111;

(2) Ten and one-half percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women described in §403.81 and the Sex Equity Program described in §403.91, as follows:

(i) Not less than seven percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(ii) Not less than three percent for the Sex Equity Program;

(3) Not more than eight and one-half percent for State Programs and State Leadership Activities described in §§403.70 and 403.71;

(4) Not more than five percent or $250,000, whichever is greater, for administration of the State plan, of which—

(i) Not less than $60,000 must be available for carrying out the provisions in §403.13, regarding the personnel requirements for eliminating sex discrimination and sex stereotyping; and

(ii) The remaining amounts may be used for the costs of—

(A) Developing the State plan;

(B) Reviewing local applications;

(C) Monitoring and evaluating program effectiveness;

(D) Providing technical assistance;

(E) Ensuring compliance with all applicable Federal laws, including required services and activities for individuals who are members of special populations; and

(F) Supporting the activities of the technical committees it establishes under §403.12(b)(1); and

(5) One percent for Programs for Criminal Offenders described in §403.101.

(c) The procedure for meeting the *hold-harmless* requirements in §403.180(a) and the $250,000 minimum for State administration provision in §403.180(b)(4) is as follows:

(1) If the five percent reserved for administration is less than the $250,000 minimum allowed by paragraph (b)(4) of this section, or if any of the amounts reserved for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women in §403.81, the Sex Equity Program in §403.91, or the Program for Criminal Offenders in §403.101, respectively, is less than the amount reserved for that program in FY 1990 (funds from the FY 1990 appropriation awarded in the States FY 1991 grant), a State shall subtract any amount necessary to satisfy the $250,000 minimum for State administration or any of the *hold-harmless* amounts from the total basic programs award received by the State.

(2) The State shall reserve $250,000 for administration and shall reserve for any program not meeting the *hold-harmless* requirement an amount necessary to meet that requirement.

(3) The State shall reserve from the remainder of the basic program award an amount for each of the remaining programs that is proportionate to the amount that program would have received in the absence of a shortfall in the amounts reserved for administration or to meet the *hold-harmless* requirements in paragraph (a)(1) of this section.

Example 1: (a) A State receives a basic programs award of $4,000,000. Five percent of the basic programs award equals $200,000, which is $50,000 less than the $250,000 minimum that may be reserved for State administration. To determine the amount of funds that will be reserved for each program under Title II, Parts A, B, and C of the Act, the State first subtracts $250,000 for State administration from the $4,000,000 basic programs award ($4,000,000 - $250,000 = $3,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Title II, Parts A, B, and C of the Act in the absence of a shortfall in the set-aside amount for administration, as follows:

3.0% x $4,000,000 =	$120,000	for Sex Equity Programs.
7.5% x $4,000,000 =	300,000	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5% x $4,000,000 =	340,000	for State Programs and State Leadership Activities.
1.0% x $4,000,000 =	40,000	for Programs for Criminal Offenders.
75% x $4,000,000 =	3,000,000	for Part C of Title II.
	3,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have received in the absence of a shortfall ($3,800,000) and multiplies the remaining basic programs award ($3,750,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($120,000/$3,800,000) x $3,750,000 =	$118,421	for Sex Equity Programs.
($300,000/$3,800,000) x $3,750,000 =	296,053	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($340,000/$3,800,000) x $3,750,000 =	335,526	for State Programs and State Leadership Activities
($40,000/$3,800,000) x $3,750,000 =	39,474	for Programs for Criminal Offenders.
($3,000,000/$3,800,000) x $3,750,000 =	2,960,526	for Part C of Title II.
	3,750,000	

This example assumes that amounts reserved meet the *hold-harmless* requirement of section 102(c)(1) of the Act.

Example 2: A State's seven percent reserve from its FY 1992 grant for the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women is $1,400,000 and the amount reserved for that program from its FY 1991 grant was $1,581,000. Therefore, the amount of FY 1992 funds reserved for that programs is $181,000 less than the amount reserved in FY 1991. The State received a basic programs award of $20,000,000 in FY 1992. The other programs under Title II, Part B meet the *hold-harmless* requirement in §403.180(a)(1), and the amount reserved for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under Title II. Parts A, B, and C of the Act as follows:

(a) First, the State subtracts $1,581,000 from the $20,000,000 total basic programs award ($20,000,000-$1,581,000=$18,419,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Parts A, B, and C of Title II of the Act in the absence of a shortfall in the set-aside amount for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women, as follows:

5.0% x $20,000,000 =	$1,000,000	for administration.
3.5% x $20,000,000 =	700,000	for Sex Equity Programs.
8.5% x $20,000,000 =	1,700,000	for State Programs and State Leadership Activities.
1.0% x $20,000,000 =	200,000	for Programs for Criminal Offenders.
75.0% x $20,000,000 =	15,000,000	for Part C of Title II.
	18,600,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sim of the amounts the programs would have earned in the absence of a shortfall ($18,600,000) and multiplies the remaining basic programs award ($18,419,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($1,000,000/$18,600,000) x $18,419,000 =	$990,269	for administration.
($7000,000/$18,600,000) x $18,419,000 =	693,188	for Sex Equity Programs.
($1,700,000/$18,600,000) x $18,419,000 =	1,683,457	for State Programs and State Leadership Activities.
($200,000/$18,600,000) x $18,419,000 =	198,054	for Programs for Criminal Offenders.
($15,000,000/$18,600,000) x $18,419,000 =	14,854,032	for Part C of Title II.
	18,419,000	

This example assumes that amounts reserved for the Sex Equity Program and Programs for Criminal Offenders meet the *hold-harmless* requirement of section 102(c)(1) and (2) of the Act.

Example 3: A State's one percent reserved from its FY 1992 grant for Programs for Criminal Offenders is $200,000 and the amount reserved for that program under section 202(6) of the CDPVEA plus other amounts obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriations totals $250,000. Therefore, the amount of FY 1992 funds reserved for that program is $50,000 less than the amount reserved and obligated for that program in FY 1991. The State received a basic programs award of $20,000,000 in FY 1992. The other programs under Title II, Part B meet the *hold-harmless* requirement of §403/180(a)(1) and the amount reserved for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under Title II, Parts A, B, and C of the Act as follows:

(a) First, the State subtracts $250,000 from the $20,000,000 total basic programs award ($20,000,000 - $250,000 = $19,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Parts A, B, and C of Title II of the Act in the absence of a shortfall in the set-aside amount for the Programs for Criminal Offenders, as follows:

5.0% x 20,000,000 =	$1,000,000	for administration.
3.5% x 20,000,000 =	700,000	for Sex Equity Programs.
7.0% x 20,000,000 =	1,400,000	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5% x 20,000,000 =	1,700,000	for State Programs and State Leadership Activities.
75.0% x 20,000,000 =	15,000,000	for Part C of Title II.
	19,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($19,800,000) and multiplies the remaining basic programs award ($19,750,000) by these percentages to determine the amount to reserve for each program under Parts A, B, C of Title II of the Act, as follows:

($1,000,000/$19,800,000) x $19,750,000 =	$997,475	for administration.
($700,000/$19,800,000) x $19,750,000 =	$698,232	for Sex Equity Programs.
($1,400,000/$19,800,000) x $19,750,000 =	$1,396,465	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($1,700,000/$19,800,000) x $19,750,000 =	$1,695,707	for State Programs and State Leadership Activities.
($15,000,000/$19,800,000) x $19,750,000 =	$14,962,121	for Part C of Title II.
	$19,750,000	

This example assumes that amounts reserved for the Sex Equity Program and for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women meet the *hold-harmless* requirement of sections 102(c)(1) and (2) of the Act.

(d) The procedure for meeting the ratable reduction provision in paragraph (a)(2) of this section is as follows:

(1) If a State's basic programs award under Title II of the Act for FY 1992 or in future years is less than that State's basic grant amount in FY 1991, a State shall determine the percentage that the basic programs award is of the FY 1991 basic programs award.

(2) The State shall multiply the amounts reserved in FY 1991 for each of the three programs covered by the *hold-harmless* provisions in paragraph (a)(1) of this section by this percentage.

(3) The State shall compare the amounts that would be reserved for these programs in FY 1992 to determine if these amounts are less than the ratably reduced *hold-harmless* amounts, and if so, shall proceed with the calculation required by paragraph (c) of this section except using the ratably reduced *hold-harmless* amounts.

(Authority: 20 U.S.C. 2312)

§403.181 What are the cost-sharing requirements applicable to the basic programs?

(a) A State shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan under §403.180(b)(4).

(b) The matching requirement under paragraph (a) of this section may be applied overall, rather than line-by-line, to State administrative expenditures.

(c) A State shall provide from non-Federal sources for State administration under the Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year.

Example for paragraph (b): From the five percent reserved for the administration of the State plan, a State must reserve $60,000 to carry out the provisions in §403.13. The $60,000 must be matched, but the matching funds need not be used for the activities described in §403.13.

(Authority: 20 U.S.C. 2312(b) and 2466d; H.R. Rep. No. 660, 101st Cong., 2nd Sess. 103-104 (1990))

§403.182 What is the maintenance of fiscal effort requirement?

The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal year per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(Authority: 20 U.S.C. 2463(a))

§403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive the maintenance of effort requirement in §403.182 for a State for one year only if—

(1) The Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances

affecting the State's ability to maintain fiscal effort; and

(2) The State has decreased its expenditures for vocational education from non-Federal sources by no more than five percent.

(b) for purposes of this section, *exceptional or uncontrollable circumstances: include, but are not limited to, the following:*

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(c) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 2463(b))

§403.184 How does a State request a waiver of the maintenance of effort requirement?

A State seeking a waiver of the maintenance of effort requirement in §403.182 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request;

(2) Information that demonstrates that a waiver is justified; and

(3) Any additional information the Secretary may require.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2463(b))

§403.185 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for vocational education from non-Federal sources in the first preceding fiscal year (or program year) with the amount spent in the third preceding fiscal year (or program year).

Example: Because exceptional or uncontrollable circumstances prevented a State from maintaining its level of fiscal effort in a program year 1989 (July 1, 1988-June 30, 1989) at the level of its fiscal effort in program year 1988 (July 1, 1987-June 30, 1988), the Secretary granted the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation). To be eligible to receive its fiscal year 1991 grant (the grant to be awarded for the year after the year of the waiver), the State's expenditures form the first preceding program year (July 1, 1989-June 30, 1990) must equal or exceed its expenditures form the third preceding program year (July 1, 1987 to June 30, 1988).

(Authority: 20 U.S.C. 2463(c))

§403.186 What are the administrative cost requirements applicable to a State?

(a) *Basic Programs.* A State may use only funds reserved under §403.180(b)(4) to administer the programs under Title II of the Act, including Programs for Criminal Offenders.

(b) *Special Programs.* (1) A State may use the funds reserved under §403.180(b)(4) to administer any of the special programs listed in §403.130.

(2) In addition to the funds reserved under §403.180(b)(4), a State may use only an amount of funds from its allotment for the State Assistance for Vocational Education Support Programs by Community-Based Organizations that is necessary and reasonable for the proper and efficient State administration of that program.

(3) In addition to the funds reserved under §403.180(b)(4), a State may use the amounts reserved for the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Business-Labor-Education Partnership for Training Program under §§403.151(c), 403.161(c), and 403.173(b), respectively, for the proper and efficient administration of each program.

(Authority: 20 U.S.C. 2302(d) (A)-(D) and 2312(a))

§403.187 How may a State provide technical assistance?

(a) Except as provided in paragraph (b) of this section, a State may use only an amount of the funds reserved for each of the basic programs listed in §403.60 and the special programs listed in §403.130 to pay the costs of providing technical assistance that is necessary and reasonable to promote or enhance the quality and effectiveness of that program.

(b) A State may not use funds reserved under §403.180(b)(1) for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program to pay the costs of providing technical assistance.

(c) In providing technical assistance under paragraph (a) of this section, a State may not use amounts to an extent that would interfere with achieving the purposes of the program for which the funds were awarded.

(Authority: 20 U.S.C. 2302(d) (A)-(D), 2312(a), and 2323(b)(5))

§403.188 What is a State's responsibility for the cost of services and activities for members of special populations?

A State is not required to use non-Federal funds to pay the cost of services and activities that it provides to members of special populations pursuant to §403.32(a)(18)-(26) or to pay the cost of services and activities that eligible recipients provide to members of special populations pursuant to §§403.111 (a)(2)(i) and (c)(3), 403.190(b), or 403.193, unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328)

Subpart H—What Conditions Must be Met by Local Recipients?

§403.190 What are the requirements for receiving a subgrant or contract?

(a) Each eligible recipient desiring financial assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program must submit to the State board, according to requirements established by the State board, an application covering the same period as the State plan, for the use of that assistance. The State board shall determine requirements for local applications, except that each application must—

(1) Contain a description of—

(i) The vocational education program to be funded, including—

(A) The extent to which the program incorporates each of the requirements described in §403.111 (a), (b), and (c); and

(B) How the eligible recipient will use the funds available under §§403.112, 403.113, or §403.116 and from other sources to improve the program with regard to each requirement and activity described in §403.111(c) and (d);

(ii) How the needs of individuals who are members of special populations will be assessed and the planned use of funds to meet those needs;

(iii) How access to programs of good quality will be provided to students who are economically disadvantaged (including foster children), students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts;

(iv) The program evaluation standards the applicant will use to measure its progress;

(v) The methods to be used to coordinate vocational education services with relevant programs conducted under the JTPA, including cooperative arrangements established with private industry councils established under section 102(a) of that Act, in order to avoid duplication and to expand the range of and accessibility to vocational education services;

(vi) The methods used to develop vocational educational programs in consultation with parents and students of special populations;

(vii) How the eligible recipient coordinates with community-based organizations:

(viii) The manner and the extent to which the eligible recipient considered the demonstrated occupational needs of the area in assisting programs funded under the Act;

(ix) How the eligible recipient will provide a vocational education program that—

(A) Integrates academic and occupational disciplines so that students participating in the program are able to achieve both academic and occupational competence; and

(B) Offers coherent sequences of courses leading to a job skill; and

(x) How the eligible recipient will monitor the provision of vocational education to individuals who are members of special populations, including the provision of vocational education to students with individualized education programs developed under the IDEA;

(2) Provide assurances that—

(i) The programs funded under §§403.112, 403.113, or 403.116 will be carried out according to the requirements regarding special populations;

(ii) The eligible recipient will provide a vocational program that—

(A) Encourages students through counseling to pursue coherent sequences of courses;

(B) Assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services such as counseling, English-language instruction, child care, and special aids:

(C) Is of a size, scope, and quality as to bring about improvement in the quality of education offered by the school; and

(D) Seeks to cooperate with the sex equity program carried out under §403.91; and

(iii) The eligible recipient will provide sufficient information to the State to enable the State to comply with the requirements in §403.113; and

(3) Contain a report on the number of individuals in each of the special populations.

(b) Each eligible recipient desiring financial assistance under Title II of the Act must provide assurances to the State board that, with respect to any project that is funded under a basic program listed in §403.60 or a special program listed in §403.130, it will—

(1) Assist students who are members of special populations to enter vocational education programs, and, with respect to students with disabilities, assist in fulfilling the transitional service requirement of section 626 of the IDEA;

(2) Assess the special needs of students participating in projects receiving assistance under a basic program listed in §403.60 or a special program listed in §403.130, with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) Provide supplementary services as defined in 34 CFR 400.4(b), to students who are members of special populations;

(4) Provide guidance, counseling, and career development activities conducted by professionally trained counselors and teachers who are associated with the provision of those special services; and

(5) Provide counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities.

(c) Each eligible recipient desiring financial assistance under Title II of the Act must provide the services and activities described in paragraph (b) of this section, to the extent possible with funds awarded under the Act, and indicate in its local application whether any non-Federal funds will be used for this purpose.

Cross-Reference: See §403.193(e).

(d) Each eligible recipient desiring financial assistance under the Act shall provide sufficient information to the State, as the State board requires, to demonstrate to the State board that the eligible recipient's projects comply with §403.32(a)(18)-(26).

(e) Each eligible recipient desiring financial assistance under the Act shall—

(1) Provide the assurance described in §403.14(a)(2); and

(2) Include in its application, as appropriate—

(i) The number of disabled students, economically disadvantaged students, and students with limited English proficiency in its vocational program;

(ii) An assessment of the vocational needs of its students with disabilities, economically disadvantaged students, and students with limited English proficiency; and

(iii) A plan to provide supplementary services sufficient to meet the needs identified in the assessment described in paragraph (e)(2)(ii).

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2321(c)(l), (d), (e); 2328; and 2343)

§403.191 What are the requirements for program evaluation?

(a) (1) Beginning in the 1992-1993 school year, each recipient of financial assistance under §§403.112, 403.113, or 403.116 shall evaluate annually the effectiveness of the particular projects, services, and activities receiving assistance under a basic program listed in §403.60, or a special program listed in §403.130, unless the State board determines pursuant to §403.201(a)(3) that a broader evaluation is required. A recipient may conduct the evaluation required under this paragraph by evaluating either the entire population of participants or a representative sample of participants.

(2) The annual evaluation must be based on the standards and measures developed by the State board in accordance with §§403.201 and 403.202, including any modifications made by the recipient in accordance with paragraph (b) of this section.

(b)(1) Each recipient may modify the State standards and measures based on—

(i) Economic, geographic, or demographic factors; or

(ii) The characteristics of the populations to be served.

(2) Modifications must conform to the assessment criteria contained in the State plan.

(c) Each recipient, as part of the annual evaluation required in paragraph (a) of this section, and with the full participation of representatives of special populations, shall—

(1) Identify and adopt strategies to overcome barriers that are resulting in lower rates of access to, or success in, vocational education programs for members of special populations; and

(2) Evaluate the progress of individuals who are members of special populations.

(d) Each recipient, as a part of the annual evaluation required in paragraph (a) of this section, shall evaluate its progress in providing vocational education students with strong experience in and understanding of all aspects of the industries the students are preparing to enter.

(e) Each recipient may use funds awarded under a basic program listed in §403.60 or a special program listed in §403.130 to support the cost of conducting the evaluation required under paragraphs (a) through (d) of this section to the extent that the costs are—

(1) Reasonable and necessary;

(2) Related to the purposes for which the funds were awarded; and

(3) Consistent with applicable requirements, such as the requirement in §403.196 to use funds awarded under Title II of the Act to supplement, and not to supplant, State and local funds.

(Authority: 20 U.S.C. 2325(a) and 2327(a))

§ 403.192 What are the requirements for program improvement?

(a) If, beginning not less than one year after implementing the program evaluation required in §403.191, a recipient determines, through its annual evaluation, that it is not making substantial progress in meeting the standards and measures developed by the State under §§403.201 and 403.202, the recipient shall develop a plan for program improvement for the succeeding school year.

(b) The plan must be developed in consultation with teachers, parents, and students concerned with or affected by the program, and must describe how the recipient will identify and modify projects, services, and activities receiving assistance under the programs listed in §§403.60 and

403.130 that are in need of improvement, including a description of—

(1) Vocational education and career development strategies designed to achieve progress in improving the effectiveness of the recipient's projects, services, and activities receiving assistance under the programs listed in §§403.60 and 403.130 evaluated under §403.191(a)(1); and

(2) If necessary, the strategies designed to improve supplementary services provided to individuals who are members of special populations.

Cross Reference: See 34 CFR 403.204.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2327(b))

§403.193 What are the information requirements regarding special populations?

(a)(1) Each local educational agency that receives funds under Title II of the Act shall provide to students who are members of special populations and their parents information concerning—

(i) The opportunities available in vocational education;

(ii) The requirements for eligibility for enrollment in those vocational education programs;

(iii) Special courses that are available;

(iv) Special services that are available:

(v) Employment opportunities; and

(vi) Placement.

(2) Each area vocational education school or intermediate educational agency that receives funds under Title II of the Act shall provide the information described in paragraph (a)(1) of this section to the students who are members of special populations and their parents in any local educational agency whose allocation was distributed in its entirety under § 402.113 to the area vocational education school or intermediate educational agency.

(b) The information described in paragraph (a)(1) of this section must be provided at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(c) Each eligible institution that receives funds under Title II of the Act shall—

(1) Provide the information described in paragraph (a)(1) of this section to each individual who requests information concerning, or seeks admission to, vocational education programs offered by the institution; and

(2) If appropriate, assist in the preparation of applications relating to that admission.

(d) Information described under paragraph (a)(1) of this section must, to the extent practicable, be in a language and form that parents and students understand.

(e) An eligible recipient is not required by this part to use non-Federal funds to pay cost of services and activities required by this section and §§403.111(a)(2)(i) and (c)(3) and 403.190(b) unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328(b) and (c) and 2342(a) and (c)(1)(C))

§403.194 What are the comparability requirements?

(a) A local educational agency may receive an award of Federal funds under the State plan only if—

(1) The local educational agency uses State and local funds to provide services in secondary schools or sites served with Federal funds awarded under the State plan that, taken as a whole, are at least comparable to those services being provided in secondary schools or sites that are not being served with Federal funds awarded under the State plan; or

(2) In the event that the local educational agency serves all its secondary schools or sites with Federal funds awarded under the State plan, the local educational agency uses State and local funds to provide services that, taken as a whole, are substantially comparable in each secondary school or site.

Cross-Reference: See Appendix B to Part 403.

(b) The comparability requirements in paragraph (a) of this section do not apply to—

(1) A local educational agency with only one secondary school or site; or

(2) A consortium composed of more than one local educational agency, except that, within a consortium, each local educational agency itself must meet the comparability requirements unless it is exempt under paragraph (b)(1) of this section.

(c)(1) A local educational agency shall develop written procedures for complying with the comparability requirements in paragraph (a) of this section, including a process for demonstrating annually that State and local funds are used to provide services in served schools and sites that are at least comparable to the services provided with State and local funds in schools or sites in the local educational agency that are not served with funds awarded under the State plan.

(2) In reaching the determination as to whether comparability requirements in paragraph (a) of this section were met, the local educational agency's written procedures—

(i) Do not have to take into account unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year; and

(ii) May not take into account any State and local funds spent in carrying out the following types of programs:

(A) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(1)(B) of chapter 1 (20 U.S.C. 2728(d)(1)(B)).

(B) Bilingual education for children of limited English proficiency.

(C) Special education for children with disabilities.

(D) State phase-in programs that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(2)(B) of Chapter 1 (20 U.S.C. 2728(d)(2)(B)).

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(Authority: 20 U.S.C. 2323(b)(19))

§403.195 What are the administrative cost requirement applicable to local recipients?

(a) Except as provided in paragraphs (b) and (c) of this section, each eligible recipient, including a State corrections educational agency, that receives an award under a basic program listed in §403.60 or a special program listed in §403.130, may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award was made.

(b) Each eligible recipient that receives an award under §§403.112, 403.113, or §403.116 may use no more than five percent of those funds for administrative costs.

(c) Each eligible partner that receives an award under the Business-Labor-Education Partnership for Training Program may use no more funds under that award for administrative costs than the amounts prescribed in §403.173(b).

(Authority: 20 U.S.C. 2342(c); 2393(a)(1) and (c))

§403.196 What are the requirements regarding supplanting?

(a) Funds made available under Title II of the Act must be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of funds under Title II of the Act be made available for the purposes specified in the State plan and the local application.

(b) Notwithstanding paragraph (a) of this section and §403.32(a)(17), funds made available under Title II of the Act may be used to pay the cost of vocational education services required by an individualized education program developed pursuant to sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)), in a manner consistent with section 614(a)(1) of that Act, and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to vocational education.

(c) Any expenditures pursuant to paragraph (b) of this section must increase the amount of funds that would otherwise be available to meet the costs of an individualized education program or to comply with section 404 of the Rehabilitation Act of 1973.

(Authority: 20 U.S.C. 2468e(a)(1))

§403.197 What are the requirements for the use of equipment?

(a) Equipment purchased with funds under §§403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased, may be used for other vocational education purposes if the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(b) Equipment purchased with funds under §§403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased or other vocational education purposes, may be used for other instructional purposes if—

(1) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program; and

(2) The other use of the equipment is after regular school hours or on weekends.

(c) The use of equipment under paragraphs (a) and (b) of this section must—

(1) Be incidental to the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased;

(2) Not interfere with the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased; and

(3) Not add to the cost of using that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased.

(Authority: 20 U.S.C. 2342(c)(3))

Subpart I—What are the Administrative Responsibilities of a State under the State Vocational and Applied Technology Education Program?

§403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?

(a) The State board may not make a payment under the Act to a local educational agency unless the LEA is in compliance with §403.194. As indicated in §403.194(a), an LEA may demonstrate its compliance with the comparability requirements by filing an appropriate assurance.

(b) The State board shall monitor each local educational agency's compliance with the comparability requirements in §403.194.

(c) If, after a local educational agency receives an award of Federal funds under the State plan, the local educational agency is found not to be in compliance with the comparability requirements, the State board shall—

(1) Withhold all or a portion of the local educational agency's grant award, but not less than the amount or percentage by which the local educational agency failed to achieve comparability under the local educational agency's procedures established pursuant to §403.194(c); or

(2) Require repayment of the amount or percentage by which the local educational agency failed to achieve comparability if the local educational agency is found not be in compliance after the period of availability of the funds awarded has ended.

(Authority: 20 U.S.C. 2323(b)(19))

§403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?

(a)(1) Each State board receiving funds under the Act shall develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) This system must—

(i) Be developed and implemented by September 25, 1992; and

(ii) Apply to all programs assisted under the Act.

(3) The State board must determine whether a recipient of funds under §§403.112, 403.113, or §403.116 must evaluate more than the particular projects, services, and activities receiving assistance under a basic program listed in §403.60 or a special program listed in §403.130 in order to carry out a valid, reliable, and otherwise meaningful evaluation of the effectiveness of these projects, services, and activities as required by §403.191(a)(1), using the standards and measures developed pursuant to paragraph (a)(1) of this section.

(4) If a State board determines under paragraph (a)(3) of this section that a recipient must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program, the State board shall-

(i) Determine whether the entire local vocational education program—or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic program or a special program; and

(ii) Require a recipient to conduct an evaluation consistent with the State board's determination under paragraph (a)(4)(i) of this section.

(b) To assist in the development and implementation of the Statewide system addressed in paragraph (a) of this section, the State board shall appoint a State Committee of Practitioners (Committee), as prescribed in 34 CFR 400.6.

(c) The State board shall convene the Committee on a regular basis to review, comment on, and propose revisions to the State board's draft proposal for a system of core standards and measures of performance for vocational education programs assisted under the Act.

(d) To assist the Committee in formulating recommendations for modifying standards and measures of performance, the State board shall provide the Committee with information concerning differing types of standards and measures including—

(1) The advantages and disadvantages of each type of standard or measure; and

(2) Instances in which those standards and measures—

(i) Have been effective; and

(ii) Have not been effective.

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(Authority: 20 U.S.C. 2325(a) and (d))

§403.202 What must each State's system of core standards and measures of performance include?

(a) The statewide system of core standards and measures of performance for vocational education programs must include—

(1) Measures of learning and competency gains, including student progress in the achievement of basic and more advanced academic skills;

(2) One or more measures of the following:

(i) Student competency attainment.

(ii) Job or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared, including occupational skills in the industry the student is preparing to enter.

(iii) Retention in school or completion of secondary school or its equivalent.

(iv) Placement into additional training or education, military service, or employment;

(3) Incentives or adjustments that are—

(i) Designed to encourage service to targeted groups or special populations; and

(ii) Developed for each student, and, if appropriate, consistent with the student's individualized education program developed under section 614(a)(5) of the IDEA; and

(4) Procedures for using existing resources and methods developed in other programs receiving Federal assistance.

(b) In developing the standards and measures included in the system developed under paragraph (a) of this section, the State board shall take into consideration and shall provide, to the extent appropriate, for consistency with—

(1) Standards and measures developed under job opportunities and basic skills training programs established and operated under a plan approved by the Secretary of Health and Human Services that meets the requirements of section 402(a)(19) of the Social Security Act (42 U.S.C. 687); and

(2) Standards prescribed by the Secretary of Labor under section 106 of the JTPA.

Cross-Reference: See 34 CFR 400.6.

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(Authority: 20 U.S.C. 2325(b), (c))

§403.203 What are the State's responsibilities for a State assessment?

(a) Each State board receiving assistance under the Act shall conduct an assessment of the quality of vocational education programs throughout the State using measurable objective criteria.

(b) In developing the assessment criteria, the State board shall—

(1) Consult with representatives of the groups described in 34 CFR 400.6(c); and

(2) Use information gathered by the National Occupational Information Coordinating Committee and, if appropriate, other information.

(c) Each State board shall—

(1) Develop assessment criteria no later than the beginning of the 1991-1992 school year; and

(2) Widely disseminate those criteria.

(d) Assessment criteria must include at least the following factors, but may include others;

(1) Integration of academic and vocational education.

(2) Sequential courses of study leading to both academic and occupational competencies.

(3) Increased student work skill attainment and job placement.

(4) Increased linkages between secondary and postsecondary educational institutions.

(5) Instruction and experience, to the extent practicable, in all aspects of an industry the students are preparing to enter.

(6) The ability of the eligible recipients to meet the needs of special populations with respect to vocational education.

(7) Raising the quality of vocational education programs in schools with a high concentration of poor and low-achieving students.

(8) The relevance of programs to the workplace and to the occupations for which students are to be trained, and the extend to which those programs reflect a realistic assessment of current and future labor market needs, including needs in areas of emerging technologies.

(9) The ability of the vocational curriculum, equipment, and instructional materials to meet the demands of the work force.

(10) Basic and higher order current and future workplace competencies that will reflect the hiring needs of employers.

(11) The capability of vocational education programs to meet the needs of individuals who are members of special populations.

(12) Other factors considered appropriate by the State board.

(e) The assessment must include an analysis of—

(1) The relative academic, occupational, training, and retraining needs of secondary, adult, and postsecondary students; and

(2) The capability of vocational education programs to provide vocational education students, to the extent practicable, with—

(i) Strong experience in, and understanding of, all aspects of the industry the students are preparing to enter (including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, and health, safety, and environmental issues); and

(ii) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of mathematics, reading, writing, science, and social studies) in a technological setting.

(f)(1) Each State board shall complete the initial assessment required by paragraph (a) of this section before March 25, 1991, and, therefore, at least six months prior to the required submission of a new State plan to the Secretary.

(2) Each State board shall conduct an assessment under this section prior to the submission of each new State plan to the Secretary.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2323(a)(3), (b)(3)(B), and 2326)

§403.204 What are the State's responsibilities for program evaluation and improvement?

(a) If, one year after an eligible recipient has implemented its program improvement plan described in §403.192, the State finds that the eligible recipient has not made sufficient progress in meeting the standards and measures developed as required by §§403.201 and 403.202, the State shall work jointly with the recipient and with teachers, parents, and students concerned with or affected by the program, to develop a joint plan for program improvement.

(b) Each joint plan required by paragraph (a) of this section must contain—

(1) A description of the technical assistance and program activities the State will provide to enhance the performance of the eligible recipient;

(2) A reasonable timetable to improve school performance under the plan;

(3) A description of vocational education strategies designed to improve the performance of the program as measured by the local evaluation; and

(4) If necessary, a description of strategies designed to improve supplementary services provided to individuals who are members of special populations.

(c) The State, in conjunction with the eligible recipient, shall annually review and revise the joint plan developed under paragraph (a) of this section and provide appropriate assistance until the recipient sustains fulfillment of State and local standards and measures developed under §§403.201 and 403.202 for more than one year.

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(Authority: 20 U.S.C. 2327(c), (d))

§403.205 What are the State's responsibilities for members of special populations?

The State board shall—

(a) Establish effective procedures, including an expedited appeals procedure, by which students who are members of special populations and their parents, teachers, and concerned area residents will be able to participate directly in State and local decisions that influence the character of programs under the Act affecting their interests; and

(b) Provide technical assistance and design procedures necessary to ensure that those individuals referred to in paragraph (a) of this section are given access to the information needed to use those procedures.

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(Authority: 20 U.S.C. 2328(d))

§403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State that will meet the common needs for the planning for, and the operation of, programs of the State board assisted under the Act and the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Authority: 20 U.S.C. 2422(b))

§403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Authority: 20 U.S.C. 2404(c))

§403.208 What are the requirements regarding supplanting?

(a) The State board is subject to the prohibition against supplanting in §403.196.

(b) The State board shall monitor each eligible recipient's compliance with the supplanting requirements in §403.196.

(Authority: 20 U.S.C. 2468e(a)(1))

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Illustration of providing full participation under 34 CFR 403.111(c). An educationally disadvantaged student is enrolled in a course that is part of a vocational education program and is having trouble understanding a math concept (e.g., negative numbers) necessary to succeed in the course. To ensure the student's full participation in the course, a local educational agency may use funds awarded under §403.112 as needed to provide tutoring in negative numbers to enable the student to understand the concept well enough to complete the vocational education course.

Illustrations of providing equitable participation under 34 CFR 403.111(c)(3).

Example 1: An area vocational education school conducts an informal meeting to provide the information required in §403.193(a) regarding the area vocational education school's vocational education programs, to parents of students who are members of special populations in a local educational agency whose allocation was distributed to the area vocational education school under §403.113. The area vocational education school conducts the meeting at a time and in a location convenient for these parents and students. At the meeting, the area vocational education school provides a staff person to assist students or their parents to complete any forms necessary to enroll in the area vocational education school's vocational education program.

Example 2: A hearing-impaired student in a local educational agency could participate in the vocational education program only if an interpreter is provided for that student. The local educational agency cannot refuse to admit the student because of the need for an interpreter.

Appendix B to Part 403—Examples for 34 CFR 403.194—Comparability Requirements.

Methods by which a local educational agency can demonstrate its compliance with the comparability requirements in 34 CFR 403.194(a) include the following:

Example 1: The local educational agency files with the State board a written assurance that it has established and implemented—

(a) A district-wide salary schedule;

(b) A policy to ensure equivalence among secondary schools or sites in teachers, administrators, and auxiliary personnel; and

(c) A policy to ensure equivalency among secondary schools or sites in the provision of curriculum materials and instructional supplies.

Example 2: The local educational agency establishes and implements other procedures for ensuring comparability, such as the following:

(a) Comparing the average number of students per instructional staff in each secondary school or site served with federal funds awarded under the State plan with the average number of students per instructional staff in secondary schools or sites not served with Federal funds awarded under the State plan. A served school is considered comparable if its average does not exceed 110 percent of the average of schools or sites in the local educational agency not served with Federal funds awarded under the State plan; or

(b) Comparing the average instructional staff salary expenditures per student in each secondary school or site served with Federal funds awarded under the State plan with the average instructional staff salary expenditure per student in schools or sites in the local educational agency not served with Federal funds awarded under the State plan. A served school is considered comparable if its average is at least 90 percent of the average of schools or sites not served with Federal funds awarded under the State plan.

PART 404—[RESERVED]

6. Part 404 is [Reserved].

7. A new part 405 is added to read as follows:

PART 405—NATIONAL TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.
405.1 What is the National Tech-Prep Education Program?
405.2 Who is eligible for an award?
405.3 What activities may the Secretary fund?
405.4 What regulations apply?
405.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

405.10 What must the application contain?

Subpart C—How Does the Secretary Make an Award?

405.20 How does the Secretary evaluate an application?
405.21 What selection criteria does the Secretary use?
405.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

405.30 What are the evaluation requirements?
405.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2394-2394e, unless otherwise noted.

Subpart A—General

§405.1 What is the National Tech-Prep Education Program?

The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and provides, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§405.2 Who is eligible for an award?

(a) Awards are provided to consortia described in 34 CFR 406.30.

(b) Members of a consortium shall—

(1) Apply jointly to the Secretary for funds; and

(2) Enter into an agreement, in the form of a single document signed by all members, designating one member of the consortium as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

Cross-Reference: See 34 CFR 75.127-75.129—Group Applications

(Authority: 20 U.S.C. 2394a(a))

§405.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for projects to develop and operate a four-year tech-prep education program.

(b) Each project assisted under this part must meet the requirements in 34 CFR 406.3(b)(1) through (7) and may also perform the activities described in 34 CFR 406.3(c).

(Authority: 20 U.S.C. 2394a(a) and 2394b)

§405.4 What regulations apply?

The following regulations apply to the National Tech-Prep Education Program:

(a) The regulations in this Part 405.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2394-2394e)

§405.5 What definitions apply?

The definitions in 34 CFR 406.5 apply to this part.

(Authority: 20 U.S.C. 2394e)

Subpart B—How Does One Apply for an Award?

§405.10 What must the application contain?

The application must contain—

(a) An articulation agreement between the participants in a consortium;

(b) A three-year plan for the development and implementation of project requirements under §405.3;

Cross-Reference: See 34 CFR 75.117

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(c) A copy of the transmittal letters the consortium sent to the State educational agency and the State agency for higher education of the State in which the consortium is located in order to notify those agencies that the consortium has submitted an application to the Secretary and to provide those agencies with a copy of the consortium's application; and

(d) Information that indicates whether the consortium is composed of either urban participants or rural participants.

(Authority: 20 U.S.C. 2394b(b)(1) and 2394c(a), (b), (e), and (f))

Subpart C—How Does the Secretary Make an Award?

§405.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §405.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §405.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §405.21.

(e) The Secretary awards up to five points to applications that—

(1) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs. Acceptable documentation of employment placement includes letters of commitment from employers to hire individuals who complete the program;

(2) Are developed in consultation with business, industry, and labor unions; and

(3) Address effectively the issues of dropout prevention and re-entry and the needs of minority youths, youths of limited English proficiency, youths with disabilities, and disadvantaged youths.

(Authority: 20 U.S.C. 2394-2394e)

§405.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The proposed project demonstrates the need for and the soundness of the rationale for developing a tech-prep education program between or among the consortium participants;

(2) The proposed project will provide tech-prep education that is designed to meet current and projected occupational needs;

(3) The proposed project demonstrates that course offerings will have a strong relationship between mathematics, science, and communication and technical preparation in engineering technology, applied science, mechanical, industrial or practical art or trade, agriculture, health, or business in both the secondary and postsecondary or apprenticeship programs;

(4) The articulation agreement between the participants in the consortium is appropriate to the needs and resources of the consortium participants;

(5) The in-service training for teachers is designed to train teachers to implement tech-prep education program curricula effectively;

(6) The training activities for counselors are designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment; and

(7) Preparatory services are provided that assist all populations to participate in tech-prep education programs.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed tech-prep education program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs, including the military; and

(iv) Successful transfer of students to a variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, including whether the design will result in the project being developed, implemented, operated, and demonstrated within the grant period;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project between or among consortium participants over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective;

(6) Will provide a comparison between

intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(7) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the project requirements, of the project director;

(ii) The qualifications, in relation to the project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire tech-prep education program equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2394-2394e)

§405.22 What additional factor does the Secretary consider?

(a) After evaluating the applications according to the criteria in §405.21, the Secretary determines whether the most highly rated applications are equitably distributed between consortia of urban participants and consortia of rural participants.

(b) The Secretary may select other applications for funding if doing so would improve the urban and rural distribution of projects funded under this program.

(Authority: 20 U.S.C. 2394c(e))

Subpart D—What Conditions Must Be Met After an Award?

§405.30 What are the evaluation requirements?

(a) Each grantee must provide and budget for an independent evaluation of grant activities.

(b) The evaluation shall be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(f) Reports documenting evaluation activities must be included as appendices to the grant recipient's annual and final performance reports.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2394-2394e)

§405.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the *Federal Register* the percentage of project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2394-2394e)

8. A new Part 406 is added to read as follows:

PART 406—STATE-ADMINISTERED TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.
406.1 What is the State-Administered Tech-Prep Education Program?
406.2 Who is eligible for an award?
406.3 What activities may the Secretary fund?
406.4 What regulations apply?
406.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

406.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

406.20 How does the Secretary make allotments?
406.21 How does the Secretary make reallotments?

Subpart D—What Conditions Must be Met After a State Receives an Award?

406.30 Who is eligible to apply to a State for an award?
406.31 How does a State carry out the State-Administered Tech-Prep Education Program?

406.32 What are the local application requirements?
406.33 What are the reporting requirements?

Authority: 20 U.S.C. 2394-2394e, unless otherwise noted.

Subpart A—General

§406.1 What is the State-Administered Tech-Prep Education Program?

If the annual appropriation for tech-prep education exceeds $50,000,000, the State-Administered Tech-Prep Education Program provides financial assistance for—

(a) Planning and developing four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) Planning and developing, in a systematic manner, strong, comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§406.2 Who is eligible for an award?

A State board of vocational education (State board) in the fifty States, Puerto Rico, the District of Columbia, or the Virgin Islands is eligible for an allotment under this program.

(Authority: 20 U.S.C. 2394a(b))

§406.3 What activities may the Secretary fund?

(a) The Secretary makes allotments to State boards to provide funding for consortia described in §406.30 for tech-prep education projects.

(b) A State board assists projects that must—

(1) Be carried out under an articulation agreement between the members of the consortium;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship training program of at least two years following secondary instruction, with a common core of required proficiency in mathematics, science, communications, and technologies designed to lead to an associate degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the consortium participants;

(4) Include in-service training for teachers that—

(i) Is designed to train teachers to implement tech-prep education program curricula effectively;

(ii) Provides for joint training for teachers from all participants in the consortium; and

(iii) May provide training on weekends, evenings, or during the summer in the form of sessions, institutes, or workshops;

(5) Include training activities for counselors designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment;

(6) Provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals so that these individuals have an opportunity to enter tech-prep education that is equal to the opportunity afforded to the general student population; and

(7) Provide preparatory services that assist all populations to participate in tech-prep education programs.

(c) A project assisted under this part may also—

(1) Provide for the acquisition of tech-prep education program equipment; and

(2) Acquire, as part of the planning activities of the tech-prep education program, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

(Authority: 20 U.S.C. 2394a, 2394b)

§406.4 What regulations apply?

The following regulations apply to the State-Administered Tech-Prep Education Program:

(a) The regulations in this Part 406.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2394-2394e)

§406.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Articulation agreement means a commitment to a program designed to provide students with a non-duplicative sequence of progressive achievement leading to competencies in a tech-prep education program.

Community college—

(1) Has the meaning provided in 34 CFR 400.4 for the term *Institution of higher education* for an institution that provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree; and

(2) Includes tribally controlled community colleges.

Institution of higher education includes an institution offering apprenticeship programs of at least two years beyond the completion of secondary school, and includes, in addition to the institutions covered by the definition of the term *institution of higher education* in 34 CFR 400.4, a—

(1) Proprietary institution of higher education;

(2) Postsecondary vocational institution;

(3) Department, division, or other administrative unit in a college or university that provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to be an equivalent degree, or to a graduate degree in nursing; and

(4) Department, division, or other administrative unit in a junior college, community college, college, or university that provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or an equivalent degree.

Tech-prep education program means a combined secondary and postsecondary program that—

(1) Leads to an associate degree or two-year certificate;

(2) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(3) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(4) Leads to placement in employment.

(Authority: 20 U.S.C. 1088 and 2394e)

Subpart B—How Does a State Apply for a Grant?

§406.10 What must the State application contain?

To receive a grant under this program, a State board shall submit an application to the Secretary at such time, in such manner, as the Secretary prescribes. The State board may submit an application along with the State plan submitted in accordance with 34 CFR 403.30. The application must include a description of—

(a) The requirements for State board approval of funding of a local tech-prep education project, including—

(1) Whether the State board intends to make awards on a competitive basis or on the basis of a formula; and

(2) If a formula is to be used, a description of that formula;

(b) How the State board will perform the following:

(1) Approve applications based on their potential to create an effective tech-prep education program as described in §406.3(b).

(2) Give special consideration to applicants that—

(i) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs;

(ii) Are developed in consultation with

business, industry, and labor unions; and

(iii) Address effectively the issues of dropout prevention and re-entry and the needs of minority youth of limited English proficiency, youth with disabilities, and disadvantaged youth;

(3) Ensure an equitable distribution of assistance between urban and rural consortium participants;

(c) How the State board will ensure that local recipients meet the requirements of this program; and

(d) How activities under this program will be coordinated with other tech-prep education programs, services, and activities provided under the State plan.

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2394c(b)-(c))

Subpart C—How Does the Secretary Make a Grant to a State?

§406.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 101(a)(2) of the Act.

(Authority: 20 U.S.C. 2394a(b)(1))

§406.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under §406.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the *Federal Register* the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(a) and (d) and 2394a(b)(1))

Subpart D—What Conditions Must be Met After a State Receives an Award?

§406.30 Who is eligible to apply to a State for an award?

(a) A State board shall provide subgrants or contracts to consortia between—

(1) A local educational agency, intermediate educational agency, area vocational education school serving secondary school students, or secondary school funded by the Bureau of Indian Affairs; and

(2) A nonprofit institution of higher education that—

(i) Is qualified as an institution of higher education as defined in §406.5, including institutions receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*);

(ii) Is not prohibited from receiving assistance under Part B of the Higher Education Act of 1965 pursuant to the provisions of section 435(a)(3) of that Act; and

(iii) Offers a two-year associate degree program, a two-year certificate program, or a two-year apprenticeship training program that follows secondary instruction; or

(3) A proprietary institution of higher education that—

(i) Is qualified as an institution of higher education as defined in §406.5;

(ii) Is not subject to a default management plan required by the Secretary; and

(iii) Offers a two-year associate degree program.

(b) A consortia must include at least one entity from paragraph (a)(1) of this section and at least one entity from either paragraph (a)(2) or (a)(3) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2394a)

§406.31 How does a State carry out the State-Administered Tech-Prep Education Program?

(a) A State board carries out the program by—

(1) Providing State administration of its grant; and

(2) Awarding subgrants or contracts to eligible consortia on a competitive basis or on the basis of a formula determined by the State board.

(b) A State board may use funds reserved under 34 CFR 403.180(b)(3) to provide support for the State-administered Tech-Prep Education Program.

(c) A State board may use no more than the amount of funds from its award under this part that is necessary and reasonable for—

(1) The proper and efficient administration of this program; and

(2) Technical assistance to promote or enhance the quality and effectiveness of the State's tech-prep education program.

(Authority: 20 U.S.C. 2331(c)(2); 2394a(b))

§406.32 What are the local application requirements?

(a) Each consortium that desires to receive an award shall submit an application to the State board.

(b) The application must be submitted at the time and contain the information prescribed by the State board, and must contain—

(1) An articulation agreement between the participants in the consortium; and

(2) A three-year plan for the development and implementation of activities under this part.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2394c(a)-(b))

§406.33 What are the reporting requirements?

The State board shall, in conjunction with recipients of subgrants and contracts, with respect to assistance received under this part, submit to the Secretary reports as may be required by the Secretary to ensure that grantees are complying with the requirements of this part.

(Approved by the Office of Management and Budget under Control No. 1830- 0030)

(Authority: 20 U.S.C. 2394a-2394e)

9. Part 407 is revised to read as follows:

PART 407—SUPPLEMENTARY STATE GRANTS PROGRAM

Subpart A—General

Sec.
407.1 What is the Supplementary State Grants Program?
407.2 Who is eligible for an award?
407.3 What activities may the Secretary fund?
407.4 What regulations apply?
407.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

407.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

407.20 How does the Secretary make allotments?
407.21 How does the Secretary make reallotments?
407.22 How does a State carry out this program?

Subpart D—How Does an Applicant Apply to a State for an Award?

407.30 Who is eligible to apply to a State for an award?
407.31 How are funds to be used by local agencies?
407.32 What are the local application requirements?
407.33 How does a State make allotments?

Authority: 20 U.S.C. 2395-2395e, unless otherwise noted.

Subpart A—General

§407.1 What is the Supplementary State Grants Program?

The Supplementary State Grants Program provides financial assistance for vocational education program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act.

(Authority: 20 U.S.C. 2395)

§407.2 Who is eligible for an award?

A State board for vocational education (State board) in the fifty States, the District of Columbia, or Puerto Rico is eligible for awards under this program.

(Authority: 20 U.S.C. 2395a)

§407.3 What activities may the Secretary fund?

Under the Supplementary State Grants Program, the Secretary makes grants or cooperative agreements to a State board to provide funding to eligible local educational agencies (LEAs) in economically depressed areas for program improvement activities described in §407.32.

(Authority: 20 U.S.C. 2395-2395a)

§407.4 What regulations apply?

The following regulations apply to the Supplementary State Grants Program:

(a) The regulations in this Part 407.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2395-2395e)

§407.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2395-2395e)

Subpart B—How does a State Apply for a Grant?

§407.10 What must the State application contain?

(a) To receive a grant under the Supplementary State Grants Program, a State board shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. The State board may submit an application along with the State plan submitted in accordance with 34 CFR 403.30. The application must—

(1) Designate the sole State agency described in 34 CFR 403.10 as the State agency responsible for the administration and supervision of activities carried out with assistance under this program;

(2) Provide for a process of consultation with the State council established under 34 CFR 403.18;

(3) Describe how funds will be allocated in a manner consistent with §407.33;

(4) Provide for an annual submission of data concerning the use of funds and students served with assistance under this program;

(5) Provide that the State board will keep records and provide information to the Secretary as may be required for purposes of financial audits and program evaluations; and

(6) Contain an assurance that the State board will comply with the requirements of this part.

(b) An application submitted by the State board under paragraph (a) of this section must be for a period of not more than three years and must be amended annually.

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2395d)

Subpart C—How Does the Secretary make a Grant to a State?

§407.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant for a given fiscal year according to the provisions in section 352 of the Act.

(Authority: 20 U.S.C. 2395a)

§407.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under §407.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the *Federal Register* the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purpose for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2395a and 2821)

§407.22 How does a State carry out this program?

(a) A State carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding 100 percent of the amounts made available under this program to eligible LEAs.

(b) A State may not use program funds for the technical assistance costs and administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(Authority: 20 U.S.C. 2312(a) and 2395b(a))

Subpart D—How Does an Applicant Apply to a State for an Award?

§407.30 Who is eligible to apply to a State for an award?

(a) An LEA is eligible to apply to the State board for an allocation if the LEA received an award under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2712).

(b) A consortium of the LEAs described in paragraph (a) of this section is also eligible to apply to the State board for an award.

(Authority: 20 U.S.C. 2395b(b))

§407.31 How are funds to be used by local agencies?

Each LEA or consortium of LEAs that receives a grant under this program—

(a) Shall give first priority to using funds provided under the grant for improving facilities and acquiring or leasing equipment for carrying out vocational education programs that are in economically depressed areas in which economically and educationally disadvantaged individuals are served, and that receive assistance under the Act;

(b) May use any funds not required to carry out the provisions of paragraph (a) of this section for other vocational education program improvement activities, such as curriculum development or teacher training; and

(c) May use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of projects, services, and activities for which the award was made.

(Authority: 20 U.S.C. 2395c)

§407.32 What are the local application requirements?

Each LEA or consortium of LEAs that desires to receive a grant under this program shall submit to the State board an application at the time, in the manner, and containing or accompanied by any information the State board may reasonably require, including evidence that the requirement in §407.31(a) is being met.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2395e)

§407.33 How does a State make allotments?

(a) *General rule.* In each fiscal year for which a State board receives a grant under this program, the State board shall allot to each eligible LEA or consortium of LEAs in the State an amount under this program that bears the same relationship to the total funds available to the State under §407.20 as the amount allotted to that LEA or those LEAs under section 1006 of Chapter 1 bears to the aggregate amount allotted to LEAs in the State under section 1006 of Chapter 1 in the fiscal year in which distribution is made.

(b) *Exception to the general rule.* In applying the provisions in paragraph (a) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (a) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(Authority: 20 U.S.C. 2395b(b))

10. Part 408 is revised to read as follows:

PART 408—COMMUNITY EDUCATION EMPLOYMENT CENTERS PROGRAM

Subpart A—General

Sec.

408.1 What is the Community Education Employment Centers Program?
408.2 Who is eligible for an award?
408.3 What activities may the Secretary fund?
408.4 What regulations apply?
408.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

408.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

408.20 What awards does the Secretary make?
408.21 How does the Secretary evaluate an application?
408.22 What selection criteria does the Secretary use?
408.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

408.30 What are the requirements regarding support services?
408.31 What are the requirements regarding a parent/community coordinator?
408.32 What are the requirements regarding a Council of Advisors?
408.33 What are the requirements regarding other center personnel?
408.34 What are the evaluation requirements?

Authority: 20 U.S.C. 2396, unless otherwise noted.

Subpart A—General

§408.1 What is the Community Education Employment Centers Program?

The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

(Authority: 20 U.S.C. 2396 and 2396a)

§408.2 Who is eligible for an award?

(a) A public secondary school or area vocational education school is eligible for an award under the Community Education Employment Centers Program if the school—

(1) Is located in or serves one or more local educational agencies that are eligible for assistance under section 1006 of Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2712); and

(2) Demonstrates that it will serve a student population that is predominantly educationally and economically disadvantaged.

(b) For purposes of paragraph (a)(2) of this section, an eligible recipient is considered to be serving—

(1) A predominately educationally disadvantaged population if over 75 percent of the students to be served are individuals—

(i) Who score at or below the 25th percentile on a standardized achievement or aptitude test;

(ii) Whose secondary school grades are below 2.0 on a 4.0 scale (grade *A* equals 4.0); or

(iii) Who fail to attain minimal academic competencies; and

(2) A predominately economically disadvantaged population if over 75 percent of the students to be served can be classified as economically disadvantaged individuals according to the definition of that term in 34 CFR 400.4.

(Authority: 20 U.S.C. 2396f and 2396i(1))

§408.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for community education employment centers.

(b) Each project assisted by the Secretary must—

(1) Operate a community education employment center on an extended year and extended day basis;

(2) Establish a collegial working environment, with substantial opportunities for staff training and development and shared decision-making;

(3) Maintain small class sizes, and to the extent possible, maintain an average class size of 15 students or fewer;

(4) Offer a broad array of secondary school course-work, including, to the extent possible—

(i) English, mathematics, history, geography, biology, chemistry, physics, and computer science;

(ii) Opportunities for student participation in a wide range of extracurricular activities, including community service and exploration, sports, fine and performing arts, and tutorial study sessions;

(iii) A comprehensive vocational-technical education program that—

(A) Was developed through regular consultation with employer-labor panels with knowledge of relevant industries; and

(B) Offers skills in planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, economic development and health, safety, and environment issues; and

(iv) Courses in health, nutrition, and parenting;

(5) Offer students on-site opportunities for assistance with career planning and decision-making, employability, entrepreneurial abilities, interpersonal communication skills, and remedial studies;

(6) Maintain an emphasis on the development of academic skills, regardless of student career objectives;

(7) Provide technical assistance and training to staff from other schools and local educational agencies within the State that wish to replicate community education employment center capabilities;

(8) Seek to use community organizations to provide support for educational activities and services to parents and students;

(9) Offer school-to-work transition services;

(10) Establish a support system to coordinate services for students as described in §408.30;

(11) Meet the requirements regarding

center personnel in §§408.31 and 408.33; and

(12) Meet the requirements regarding a Council of Advisors in §408.32.

(c) Projects assisted by the Secretary under this part may organize community education employment centers into one or more programs specializing in different areas of study of particular interest and employment opportunities for the student population.

(Authority: 20 U.S.C. 2396b, 2396c, and 2396d(a))

§408.4 What regulations apply?

The following regulations apply to the Community Education Employment Centers Program:

(a) The regulations in this Part 408.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2396a-2396m)

§408.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Parent includes a legal guardian or other person standing in loco parentis.

(Authority: 20 U.S.C. 2396i)

Subpart B—How Does One Apply for an Award?

§408.10 What must an application contain?

An application must—

(a) Contain information demonstrating that the area where the center is to be located has a high concentration of children from low-income families, relative to the county and State as a whole, such as proof of eligibility for an award under section 1006 of the Elementary and Secondary Education Act;

(b) Describe the activities and services for which assistance is sought;

(c) Describe how the applicant will comply with the provisions of §§408.2, 408.3, and 408.30 through 403.34;

(d) Provide assurances that the State and local educational agencies in which the applicant is located or serves will, in any fiscal year, supply at least the same fiscal effort per student, with respect to the provision of free public education, to community education employment center students as the local educational agency provides for students attending secondary schools in the local educational agency;

(e) Describe how the applicant will use funding available from appropriate employment, training, and education programs in the State in order to provide a maximum amount of resources for instructional and student services; and

(f) Provide assurances that the community education employment center will coordinate the operations of the center with local postsecondary institutions, business, industry, labor, and other appropriate public and private community agencies in order to help meet local economic needs.

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(Authority: 20 U.S.C. 2396g)

Subpart C—How Does the Secretary Make an Award?

§408.20 What awards does the Secretary make?

The Secretary makes awards to establish and operate not more than 10 community education employment centers for up to five years.

(Authority: 20 U.S.C. 2396a)

§408.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §408.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §408.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §408.22.

(Authority: 20 U.S.C. 2396a-2396m)

§408.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The center will be located in an urban or rural area that has a high concentration of children from low-income families, relative to the county and State as a whole;

(2) Activities and services will be provided to low-income urban and rural youth with education, skills, and the enrichment necessary to ensure graduation from secondary school, transition from secondary school to postsecondary school, or employment;

(3) Proposed activities will be coordinated with the entities listed in §408.10(f) to ensure that the operations of the community education employment center will help meet current and projected occupational needs in the area;

(4) In-service training will be provided for community education employment center teachers in techniques, procedures, and policies relevant to the community education employment center;

(5) Support services will be provided to meet the requirements of §408.30; and

(6) Parental and community participation will be provided for, as required in §408.31.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed community education employment center on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student performance, achievement, and learning gains in vocational competencies and skills;

(ii) Student performance, achievement, and learning gains in such subjects as English, mathematics, history, geography, biology, chemistry, physics, and computer science as measured by standardized tests;

(iii) High school graduation;

(iv) Placement of students in jobs, including military service; and

(v) Successful transfer of students to a wide variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project, including the

provision for meeting and reporting on the requirements in §408.34;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the services provided to participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to assess the effectiveness and efficiency of the plan for demonstrating and disseminating information about the project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating those methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting and training others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the parent/community coordinator and personnel who will be employed to meet the requirements in §408.33;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from appropriate employment, training, and education agencies in the State to provide project services and activities, and using non-Federal resources of community organizations to provide the support services described in §408.30; and

(4) Proposes using funds or resources available from the State or local educational agency in which the center will be located or will serve to acquire community education employment center equipment and facilities in order to provide a maximum amount of resources for instructional and student services.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to assess the adequacy of resources the applicant plans to devote to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396e, 2396g, and 2396h)

§408.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in §408.22, the Secretary may select other than the most highly rated applications for funding if doing so would improve the—

(a) Distribution between applicants serving rural and urban youth; or

(b) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396)

Subpart D—What Conditions Must Be Met After an Award?

§408.30 What are the requirements regarding support services?

Each grantee shall establish in its community education employment center a support system to coordinate services for students, including the following:

(a) A comprehensive program of confidential guidance counseling that provides—

(1) Guidance for career and personal decision-making and postsecondary institution placement;

(2) Mentoring and referral to appropriate social services; and

(3) An accessible counseling service to help parents to participate in the enhancement of student education.

(b) An on-site job service office to offer students—

(1) Career guidance, career development, and employment counseling that provides information about a broad range of occupations and alternative career paths;

(2) Labor market information, job development, career testing, and occupational placement services for part-time and summer employment, internships, cooperative programs, and part-time and full-time employment opportunities upon graduation; and

(3) Assistance in arranging part-time employment, so long as that employment does not adversely affect academic performance.

(c) Assistance in arranging a summer program of work, education, or enrichment sessions.

(d) To the extent possible, transportation to and from the community education employment center and part-time job sites.

(e) Access to day-care services for children of participating students.

(Authority: 20 U.S.C. 2396c)

§408.31 What are the requirements regarding a parent/community coordinator?

Each grantee shall employ a parent/community coordinator to provide for the active and informed participation of parents and appropriate community representatives in its community education employment center by—

(a) Encouraging parents and students to

make informed decisions in reviewing and selecting a community education employment center program;

(b) Conducting regular parent seminars to—

(1) Inform parents about community education employment center operations;

(2) Obtain parent input; and

(3) Disseminate information on how parents can encourage student performance;

(c) Providing the parents of each student with a regular opportunity to meet with counselors, teachers, and the student to discuss student progress, plans, and needs;

(d) Providing a range of roles in which parents may work with students at home or as class assistants or volunteer coordinators; and

(e) Establishing a Council of Advisors as required in §408.32.

(Authority: 20 U.S.C. 2396d(a))

§408.32 What are the requirements regarding a Council of Advisors?

(a) *Establishment.* Each grantee shall establish an advisory Council of Advisors (Council).

(b) *Membership.* The Council must consist of one representative from each of the following entities:

(1) The local educational agency in which the center is located or serves.

(2) The State council on vocational education.

(3) The State agency responsible for secondary vocational education.

(4) The student body.

(5) The local teacher organization.

(6) Guidance counselors.

(7) Community-based organizations.

(8) Parents.

(9) The appropriate private industry council established under section 102(a) of the Job Training Partnership Act (29 U.S.C. 1512).

(c) *Functions of the council.* The Council shall provide recommendations to, and work with, the grantee to—

(1) Establish annual community education employment center priorities, programs, and procedures;

(2) Establish student selection criteria to ensure that—

(i) All students in the school district have an equal opportunity to attend the community education employment center; and

(ii) Participants will be representative of the secondary school population in the school district;

(3) Promulgate a student code of conduct that must be developed in consultation with the students and teachers;

(4) Assist in the selection of the community education employment center's principal, administrators, department chairpersons, and teachers;

(5) Assist in the selection and application of assessment tools for continuous evaluation of student learning progress;

(6) Make recommendations for the selection of curriculum, textbooks, software, and other learning resources and equipment; and

(7) Make recommendations regarding the coordination of activities assisted under this part with—

(i) Activities assisted under the Job Training Partnership Act; and

(ii) School-to-work transition activities.

(Authority: 20 U.S.C. 2396d(a)(5), (b))

§408.33 What are the requirements regarding other center personnel?

Each grantee shall—

(a) Employ only professional staff who demonstrate the highest of academic, teaching, guidance, or administrative standards;

(b) Ensure that teachers in the center receive inservice training at least annually in techniques, procedures, and policies relevant to the community education employment center; and

(c) Employ a sufficient number of full-time certified or licensed guidance and career counselors to assist, enhance, and monitor student progress.

(Authority: 20 U.S.C. 2396e)

§408.34 What are the evaluation requirements?

(a) Each grantee shall provide for an independent evaluation of grant activities and student learning progress.

(b) The evaluation must be both formative and summative in nature, and must include information regarding—

(1) Student academic and vocational competencies, including competencies such as those in the academic and vocational areas described in §408.3(a)(4)(i) and (iii)(B);

(2) Student dropout rates;

(3) Employment and earnings while the students are attending the community education employment center and upon the graduation of the students from the center;

(4) Student attendance at postsecondary institutions or student enlistment into military service upon graduation from the community education employment center;

(5) Parental, student, and community participation in the activities of the community employment education center; and

(6) Project spread and transportability.

(c) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first six months of the project period.

(d) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396h(a))

11. Part 409 is added to read as follows:

PART 409—VOCATIONAL EDUCATION LIGHTHOUSE SCHOOLS PROGRAM

Subpart A—General

Sec.
409.1 What is the Vocational Education Lighthouse Schools Program?
409.2 Who is eligible for an award?
409.3 What activities may the Secretary fund?
409.4 What regulations apply?
409.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

409.20 How does the Secretary evaluate an application?
409.21 What selection criteria does the Secretary use?
409.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

409.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2396m, unless otherwise noted.

Subpart A—General

§409.1 What is the Vocational Education Lighthouse Schools Program?

The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools.

(Authority: 20 U.S.C. 2396m(a))

§409.2 Who is eligible for an award?

A public secondary school or area vocational education school is eligible for an award under the Vocational Education Lighthouse Schools Program.

(Authority: 20 U.S.C. 2396m(a))

§409.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects to establish vocational education lighthouse schools that—

(a) Serve as a model vocational education program that—

(1) Provides each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(2) Provides each student with basic and higher order skills and develops the

student's problem solving abilities in a vocational setting;

(3) Offers exceptionally high quality programs for disadvantaged and minority students;

(4) Provides the special services and modifications necessary to help individual students successfully complete the program;

(5) Is planned, developed, and implemented with the participation of staff, local employers, and local community representatives; and

(6) Offers a full range of programs, including comprehensive career guidance and counseling, for students who plan to seek employment upon graduation or who will enroll in a two- or four-year college;

(b) Provide information and assistance to other vocational education lighthouse schools funded under this part, vocational programs, vocational education personnel, parents, students, educators, community members, and community organizations throughout the State in which the project is located regarding—

(1) Curriculum materials;

(2) Curriculum development, especially the integration of vocational and academic education;

(3) Inservice and preservice staff development, training, and assistance through off-site activities and through a range of short-term and long-term opportunities to participate in activities at the demonstration site;

(4) Opportunities to systematically observe the model program; and

(5) Technical assistance and staff development, as appropriate;

(c) Use funds received under this program, together with funds from non-Federal sources, to develop and implement model programs containing the elements described in paragraph (a) of this section;

(d) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(e) Develop and disseminate model approaches—

(1) For meeting the education and training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency; and

(2) To reduce and eliminate sex bias and stereotyping.

(Authority: 20 U.S.C. 2396m(b))

§409.4 What regulations apply?

The following regulations apply to the National Vocational Education Lighthouse Schools Program:

(a) The regulations in this Part 409.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2396m)

§409.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2396m)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§409.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §409.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §409.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §409.21.

(Authority: 20 U.S.C. 2396m)

§409.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess—

(1) The quality of the plan to—

(i) Provide each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(ii) Provide each student with basic and higher order skills and develop the student's problem solving abilities in a vocational setting;

(iii) Involve staff, local employers, and local community representatives in the planning for and developing the project;

(iv) Integrate vocational and academic education;

(v) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(vi) Offer exceptionally high quality programs for disadvantaged and minority students;

(2) The extent to which the project—

(i) Is specifically designed to meet the education and training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency;

(ii) Will contribute to the reduction and elimination of sex bias and stereotyping; and

(iii) Is designed in accordance with current and projected occupational needs; and

(3) The quality of the staff development plan.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed vocational education lighthouse school on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student achievement and learning gains in vocational education;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the achievement of the outcomes described in paragraph (a) of this section and the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that result in achievement of the outcomes described in paragraph (a) of this section and address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project's management design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective

and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants in terms of the activities described in §409.3(a), as appropriate, and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Identification of target groups and provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from non-Federal sources such as appropriate employment, training, and education programs in the State to acquire vocational education lighthouse school equipment and facilities in order to devote a maximum amount of resources to instructional services; and

(4) Includes documentation of the availability of funds from non-Federal sources that will be used for activities described in §409.3(a).

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

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(Authority: 20 U.S.C. 2396m)

§409.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in §409.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396m)

Subpart D—What Conditions Must Be Met After an Award?

§409.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must include assessment of student achievement in areas such as those described in §409.3(a)(1) and (2); increases in academic and vocational competencies, completion, and placement rates; and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), shall be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396m)

12. Part 410 is revised to read as follows:

PART 410—TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS PROGRAM

Subpart A—General

Sec.

410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?
410.2 Who is eligible for an award?
410.3 What activities may the Secretary fund?
410.4 What regulations apply?
410.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

410.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

410.20 How does the Secretary apply the selection criteria in §410.21?
410.21 What selection criteria does the Secretary use for institutional support grants?
410.22 What additional factors does the Secretary consider?
410.23 How does the Secretary select grantees for institutional support grants?
410.24 How does the Secretary award additional grants?

Subpart D—What Conditions Must Be Met After an Award?

410.30 What expenses are allowable under an institutional support grant?
410.31 What other provisions apply to this program?

Authority: 20 U.S.C. 2397 - 2397h, unless otherwise noted.

Subpart A—General

§410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?

The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

(Authority: 20 U.S.C. 2397 and 2397c)

§410.2 Who is eligible for an award?

A tribally controlled postsecondary vocational institution is eligible for assistance under this part if it—

(a) Is governed by a board of directors or trustees, a majority of whom are Indians;

(b) Demonstrates adherence to stated goals, a philosophy, or a plan of operation that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(c) Has been in operation for at least three years;

(d) Holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(e) Enrolls the full-time equivalency of not fewer than 100 students, of whom a majority are Indians.

(Authority: 20 U.S.C. 2397b)

§410.3 What activities may the Secretary fund?

The Secretary provides grants for basic support for the education and training of Indian students, including—

(a) Training costs;

(b) Educational costs;

(c) Equipment costs;

(d) Administrative costs; and

(e) Costs of operation and maintenance of the institution.

(Authority: 20 U.S.C. 2397a)

§410.4 What regulations apply?

The following regulations apply to the Tribally Controlled Postsecondary Vocational Institutions Program:

(a) The regulations in this Part 410.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S. C. 2397-2397h)

§410.5 What definitions apply?

(a) The definitions in 34 CFR Part 400.4 apply to this part, except for the definition of the term *Act*.

(b) The following definitions also apply to this part:

Act means the Tribally Controlled Vocational Institutions Support Act of 1990.

Indian means a person who is a member of an Indian tribe.

Indian student count means a number equal to the total number of Indian students enrolled in each tribally controlled vocational institution, determined as follows:

(1) The registrations of Indian students as in effect on October 1 of each year.

(2) Credits or clock hours toward a certificate earned in classes offered during a summer term must be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Credits or clock hours toward a certificate earned in classes during a summer term must be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of the student on the basis of the student's ability to benefit from the education or training offered. The institution is presumed to have established those criteria if the admission procedures for those studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. Credit earned by the student for purposes of obtaining a high school degree or its equivalent may not be counted toward the computation of the Indian student count.

(4) Indian students earning credits in any continuing education program of a tribally controlled vocational institution must be included in determining the sum of all credit or clock hours.

(5) Credits or clock hours earned in a continuing education program must be converted to the basis that is in accordance with the institution's system for providing credit for participation in those programs.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. §1601 *et seq.*), that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribally controlled postsecondary vocational institution means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes, and that offers technical degrees or certificate granting programs. This term does not include an institution that is a tribally controlled community college as defined in 34 CFR 400.4. (See Cong. Rec. S4116 (daily ed. April 5, 1990) (Statement of Senator Bingaman); Cong. Rec. H1708 (daily ed. May 9, 1989) (Statement of Rep. Richardson)).

(Authority: 20 U.S.C. 2397h and 25 U.S.C. 1801 (1) and (2))

Subpart B—How Does One Apply for an Award?

§410.10 What must an application contain?

(a) An application for a grant under the Tribally Controlled Postsecondary Vocational Institutions Program must include the following:

(1) Documentation showing that the institution is eligible according to the requirements in §410.2.

(2) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-Federal auditor to audit the institution's programs.

(3) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed in §410.30.

(4) The institution's Indian student count.

(b) An application for an institutional support grant must also contain a comprehensive development plan addressing the following:

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies the institution's distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve and the programs of study it offers and proposes to offer.

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population.

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students.

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors that could affect the institution.

(5) Major problems or deficiencies that inhibit the institution from realizing its

mission.

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (b)(5) of this section.

(7) Measurable objectives related to reaching each goal.

(8) Time-frames for achieving the goals and objectives described in paragraphs (b)(6) and (7) of this section.

(9) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas.

(10) Major resource requirements necessary to achieve the institution's goals and objectives, including personnel, finances, equipment, and facilities.

(11) A detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Act. The statement must include information on allowable expenses listed in §410.30.

(12) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2397b, 2397c(a), 2397d(b)(2)(B), and 2397f)

Subpart C—How Does the Secretary Make an Award?

§410.20 How does the Secretary apply the selection criteria in §410.21?

(a) The Secretary evaluates an application on the basis of the criteria in §410.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §410.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion in §410.21 is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §410.21.

(Authority: 20 U.S.C. 2397 - 2397h)

§410.21 What selection criteria does the Secretary use for institutional support grants?

The Secretary uses the following criteria to evaluate an application for an institutional support grant:

(a) *Institutional goals and objectives*. (10 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved.

(b) *Comprehensive development plan*. (25 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, and equipment and capital requirements.

(c) *Implementation strategy*. (20 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(1) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(2) Includes a realistic timetable for each such activity; and

(3) Includes a staff management plan likely to ensure effective administration of the project activities.

(d) *Budget and cost effectiveness*. (20 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(2) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

(3) The budget narrative justifies the expenditures.

(e) *Evaluation plan*. (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(2) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(3) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2397 - 2397h)

§410.22 What additional factors does the Secretary consider?

(a) After evaluating applications according to the criteria in §410.21 and consulting, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered, the Secretary determines whether the most highly rated applications are equitably distributed among Indian tribes.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects among Indian tribes.

(c) In addition to the criteria in §410.21, the Secretary considers whether funding a particular applicant duplicates an effort already being made.

(Authority: 20 U.S.C. 2397 - 2397h)

§410.23 How does the Secretary select grantees for institutional support grants?

(a) The Secretary selects at least two eligible applicants for funding.

(b) If only one or two applicants are eligible, the Secretary selects each eligible applicant. The amount of each grant is determined by the quality of the application, based on the selection criteria in §410.22, and the respective needs of the applicants.

(c) If there are more than two eligible applicants, the Secretary ranks each application using the selection criteria in §410.22. The Secretary funds two or more applicants. The number of grants made and the amount of each grant is determined by taking into account the quality of the applications and the respective needs of the applicants.

(d) For fiscal years subsequent to the first year of funding, the Secretary follows the procedure in paragraphs (a) through (c) of this section, except that if appropriations for that fiscal year are not sufficient to pay in full the total amount that approved applicants are eligible to receive, the Secretary allocates the available grant amounts as required by section 388(a) of the Act.

(Authority: 20 U.S.C. 2397c(b))

§410.24 How does the Secretary award additional grants?

If funds remain after providing grants to all eligible institutions, the Secretary makes awards as follows:

(a) The Secretary allocates funds to

institutions receiving their first grant under this part in an amount equal to the training equipment costs necessary to implement training programs.

(b) If funds remain after the Secretary makes awards under paragraph (a) of this section, the Secretary reviews training equipment needs at each institution receiving assistance under this part at the end of the five-year period beginning on the first day of the first year for which the institution received a grant under this part, and provides allocations for other training equipment needs if it is demonstrated by the institution that its training equipment has become obsolete for its purposes, or that the development of other training programs is appropriate.

(Authority: 20 U.S.C. 2397d(d))

Subpart D—What Conditions Must Be Met After an Award?

§410.30 What expenses are allowable under an institutional support grant?

An institutional support grant may only be used to pay expenses associated with the following:

(a) The maintenance and operation of the program, including—

(1) Development costs;

(2) Costs of basic and special instruction, including special programs for individuals with disabilities and academic instruction;

(3) Materials;

(4) Student costs;

(5) Administrative expenses;

(6) Boarding costs;

(7) Transportation;

(8) Student services;

(9) Day care and family support programs for students and their families, including contributions to the costs of education for dependents; and

(10) Training equipment costs necessary to implement training programs.

(b) Capital expenditures, including operations and maintenance, minor improvements and repair, and physical plant maintenance costs.

(c) Costs associated with repair, upkeep, replacement, and upgrading of instructional equipment.

(Authority: 20 U.S.C. 2397d(a), (d))

§410.31 What other provisions apply to this program?

(a) Except as specifically provided in the Act, eligibility for assistance under this part may not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) or any other applicable program for the benefit of institutions of higher education or vocational education.

(b) No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) may be denied a contract for that portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) (except as provided in that Act), or denied appropriate contract support to administer that portion of the appropriated funds.

(Authority: 20 U.S.C. 2397e)

13. Part 411 is revised to read as follows:

PART 411—VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.

411.1 What is the Vocational Education Research Program?
411.2 Who is eligible for an award?
411.3 What activities may the Secretary fund?
411.4 What regulations apply?
411.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

411.20 How does the Secretary evaluate an application?
411.21 What selection criteria does the Secretary use?
411.22 What additional factors may the Secretary consider?
411.23 How does the Secretary evaluate unsolicited applications?
411.24 How does the Secretary select an unsolicited application for funding?

Authority: 20 U.S.C. 2401 and 2402, unless otherwise noted.

Subpart A—General

§411.1 What is the Vocational Education Research Program?

The Vocational Education Research Program is designed to—

(a) Improve access to vocational educational programs for individuals with disabilities, individuals who are disadvantaged, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Support research and development activities that make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population by concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society;

(c) Improve the competitive process by which research projects are awarded;

(d) Encourage the dissemination of findings of research projects assisted under the Act to all States; and

(e) Support research activities that are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Authority: 20 U.S.C. 2401)

§411.2 Who is eligible for an award?

(a) Any individual or public or private agency, organization, or institution may apply for an award under this part.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Authority: 20 U.S.C. 2402(a), (b))

§411.3 What activities may the Secretary fund?

The Secretary may directly, or through grants, cooperative agreements, or contracts, conduct applied research on aspects of vocational education that are specially related to the Act, including the following:

(a) Applied research on—

(1) Effective methods for providing quality vocational education to individuals with disabilities, disadvantaged individuals, men and women in nontraditional fields, adults, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) The development and implementation of performance standards and measures that fit within the needs of State boards of vocational education or eligible recipients as defined in 34 CFR 400.4 in carrying out the provisions of the Act and on the relationship of those standards and measures to the data system established under section 421 of the Act. Research may include an evaluation of existing performance standards and measures and dissemination of that information to State boards of vocational education and eligible recipients;

(3) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their efficacy and for improving worker training and retraining;

(4) The constructive involvement of the private sector in public vocational education;

(5) Successful methods of reinforcing and enhancing basic and more advanced academic and problem-solving skills in vocational settings;

(6) Successful methods for providing students, to the maximum extent

practicable, with experience in and understanding of all aspects of the industry those students are preparing to enter; and

(7) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training.

(b) An evaluation of the use of performance standards and measures under the Act and the effect of those standards and measures on the participation of students in vocational education programs and on the outcomes of students in those programs, especially students who are members of special populations as defined in 34 CFR 400.4.

(Authority: 20 U.S.C. 2402(a))

§411.4 What regulations apply?

The following regulations apply to the Vocational Education Research Program:

(a) The regulations in this Part 411.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2401 and 2402)

§411.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2401 and 2402)

Subpart B—[Reserved]

Subpart C— How Does the Secretary Make a Grant?

§411.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in §411.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of the section, based on the criteria in §411.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §411.21.

(e) The Secretary awards five points to applications submitted by public or private postsecondary institutions.

(Authority: 20 U.S.C. 2402)

§411.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *National need.* (20 points) The Secretary reviews each application to determine the extent to which the project would make a contribution of national significance, as measured by such factors as—

(1) The need for the project in relation to any program priority announced in the *Federal Register*; and

(2) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable and necessary in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(4) If appropriate, identifies expected outcomes of the project participants and how those outcomes will be measured;

(5) If appropriate, will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) To the extent possible, include a third party evaluation.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A clear description of the project outcomes; and

(3) A detailed description of how information and materials will be disseminated, including—

(i) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journals articles, newsletters, and brochures;

(ii) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques; and

(iii) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2402)

§411.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in §411.21 the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this part.

(Authority: 20 U.S.C. 2401 and 2402)

§411.23 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application that has not been submitted under a competition announced in the *Federal Register* for that fiscal year, if the project proposes activities described in §411.3.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the *Federal Register*.

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures in §§411.20(e) and 411.24.

(d) The Secretary assigns the 15 points reserved under §411.20(b) as follows:

(1) Ten points to the selection criterion in §411.21(a) — national need.

(2) Five points to the selection criterion in §411.21(b)—plan of operation.

(Authority: 20 U.S.C. 2402)

§411.24 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in §411.21, the Secretary compares that application to other unsolicited research applications the Secretary has received.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Authority: 20 U.S.C. 2402)

14. Part 412 is revised to read as follows:

PART 412—NATIONAL NETWORK FOR CURRICULUM COORDINATION IN VOCATIONAL AND TECHNICAL EDUCATION

Subpart A—General

Sec.

412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?
412.2 Who is eligible for an award?
412.3 What activities may the Secretary fund?
412.4 What is the National Network of Directors Council?
412.5 What regulations apply?
412.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

412.20 How does the Secretary evaluate an application?
412.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

412.30 What additional activities must be carried out by Curriculum Coordination Centers?
412.31 What existing dissemination system must be used?

Authority: 20 U.S.C. 2402(c), unless otherwise noted.

Subpart A—General

§412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?

The National Network for Curriculum Coordination in Vocational and Technical Education (Network) is a system of six curriculum coordination centers that disseminate information resulting from research and development activities carried out under the Act, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

§412.2 Who is eligible for an award?

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program.

(Authority: 20 U.S.C. 2402(c))

§412.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts to six regional curriculum coordination centers (CCCs).

(b) Each CCC must—

(1) Provide for national dissemination of information on effective vocational and technical education programs and materials, with particular attention to regional programs;

(2) Be accessible by electronic means;

(3) Provide leadership and technical assistance in the design, development, and dissemination of curricula for vocational education;

(4) Coordinate the sharing of information among the States with respect to vocational and technical education curricula;

(5) Reduce duplication of effort in State activities for the development of vocational and technical education curricula; and

(6) Promote the use of research findings with respect to vocational education curricula.

(c) The six regional CCCs assisted with funds under this program must serve States according to the Department of Education's regional alignment as follows:

(1) The Northeast Curriculum Coordination Center serves Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(2) The Southeast Curriculum Coordination Center serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) The East Central Curriculum Coordination Center serves Delaware, the District of Columbia, Indiana, Illinois, Maryland, Michigan, Minnesota, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

(4) The Midwest Curriculum Coordination Center serves Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

(5) The Northwest Curriculum Coordination Center serves Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(6) The Western Curriculum Coordination Center serves American Samoa, Arizona, California, Guam, Hawaii, Nevada, the Northern Mariana Islands, and Palau until the Compact of Free Association with Palau takes effect.

(Authority: 20 U.S.C. 2402(c))

§412.4 What is the National Network of Directors Council?

(a) The National Network of Directors Council (Council) enhances the effectiveness of the Network by—

(1) Planning for inter-center coordination, dissemination, and diffusion activities;

(2) Providing leadership to ensure cohesiveness for overall Network functions;

(3) Promoting the adoption and adaptation of curriculum materials;

(4) Maintaining liaison with dissemination systems described in §412.32;

(5) Convening at least twice a year; and

(6) Planning for and participating in an annual meeting of CCCs that includes activities such as displays of current curriculum materials from each CCC, inservice training sessions, and hands-on experience with new technologies in vocational and technical education. This meeting must be held in a different region each year.

(b) The Council is composed of the six CCC directors and a liaison from the Department. One of the CCC directors serves as chair for the Council and has responsibilities for submitting minutes of Council meetings to the Secretary.

(Authority: 20 U.S.C. 2402(c))

§412.5 What regulations apply?

The following regulations apply to the National Network for Curriculum Coordination in Vocational and Technical Education:

(a) The regulations in this Part 412.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2402(c))

§412.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2402(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§412.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in §412.21.

(b) The Secretary may award up to 100 points, including 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §412.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §412.21.

(Authority: 20 U.S.C. 2402(c))

§412.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Regional need.* (30 points) The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including the extent to which the applicant—

(1) Demonstrates an understanding of the leadership responsibilities associated with serving as a resource center and facilitator for States in a region, including the region's need for inservice training, holding regional meetings, providing technical assistance, coordinating with State directors of vocational education, maintaining a lending library, and disseminating information regularly;

(2) Proposes adequate mechanisms and procedures for reporting the results of curriculum networking services and activities of the 50 States, District of Columbia, Puerto Rico, and the Outlying Areas;

(3) Demonstrates the capacity to disseminate information on effective vocational education materials, including curriculum materials;

(4) Demonstrates an understanding of the operation of the Vocational Education Curriculum Materials and ADVOCNET Systems and the need for establishing a Tech-Prep education clearinghouse; and

(5) Demonstrates the capacity to undertake the responsibilities associated with participation as a member of the Network Directors Council described in §412.4.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraph (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine the personnel qualifications under paragraph (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in the fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Has experience with vocational education curriculum and dissemination;

(2) Will initiate and maintain liaison functions with regional States; and

(3) Will provide adequate facilities, equipment, and supplies.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities; and

(2) The budget contains costs that are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project; and

(2) Identifies expected outcomes of the services provided and how those services will be measured.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2402(c))

Subpart D—What Conditions Must Be Met After An Award?

§412.30 What additional activities must be carried out by Curriculum Coordination Centers?

In carrying out the activities described in §412.3, each CCC must perform the following activities:

(a) Assist States in the development, adaptation, adoption, dissemination, and use of curriculum materials and services and other information resulting from research and development activities carried out under the Act, including performing these activities during at least two regional meetings involving States served by the CCC. One of these regional meetings must be conducted jointly with the other five CCCs and their regional States at the meeting described in §412.4(a)(6).

(b) Coordinate with other curriculum coordination centers funded under this part.

(c) Coordinate with the State salaried State liaison representative (SLR), who is appointed by the State director of vocational education. The SLR has primary responsibilities for liaison activities within the States, including—

(1) Obtaining new curriculum and research and development materials for Network sharing;

(2) Informing localities and State agencies of Network services;

(3) Disseminating CCC related materials;

(4) Arranging for intrastate and interstate development and dissemination activities;

(5) Arranging for technical assistance and inservice training workshops;

(6) Participating in regional CCC meetings; and

(7) Fostering adoption and adaptations of materials available through the CCC.

(d) Maintain a lending library with a collection of vocational education curriculum, research, and development materials for use by the States served by the CCC.

(e) Each CCC must participate in the Council activities described in §412.4.

(Authority: 20 U.S.C. 2402(c))

§412.31 What existing dissemination systems must be used?

In carrying out its activities, each CCC must use existing dissemination systems, including the National Diffusion Network and the National Center or Centers for Research in Vocational Education, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

15. A new Part 413 is added to read as follows:

PART 413—NATIONAL CENTER OR CENTERS FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.

413.1 What is the National Center or Centers for Research in Vocational Education?
413.2 Who is eligible to apply for the National Center or Centers?
413.3 What kinds of activities are carried out?
413.4 How does the Secretary designate a National Center or Centers?
413.5 What regulations apply?
413.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

413.20 How does the Secretary evaluate an application?
413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?
413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

Subpart D—What Conditions Must Be Met After an Award?

413.30 What are the restrictions on the use of funds?
413.31 Must a National Center have a director?
413.32 What are the requirements for coordination?
413.33 What substantive studies must the National Center or Centers conduct and submit?
413.34 What activities must be performed during the final year of an award?

Authority: 20 U.S.C. 2404, unless otherwise noted.

Subpart A—General

§413.1 What is the National Center or Centers for Research in Vocational Education?

The Secretary supports the establishment of one or two National Centers for Research in Vocational Education (National Center) in the areas of—

(a) Applied research and development; and

(b) Dissemination and training.

(Authority: 20 U.S.C. 2404)

§413.2 Who is eligible to apply for the National Center or Centers?

An institution of higher education or consortium of institutions of higher education may apply to be a National Center under this part.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 2404(a)(5))

§413.3 What kinds of activities are carried out?

The Secretary provides a grant or cooperative agreement to a National Center or Centers that are designed to perform either one or both of the following activities:

(a) *Applied research and development activities.*

(1) A major purpose of the National Center is to design and conduct research and development activities that are consistent with the purposes of the Act, including—

(i) Longitudinal studies that extend over a period of years;

(ii) Supplementary and short-term activities; and

(iii) Upon negotiation with the center, and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct applied research and development activities that include examination of the following:

(i) Economic changes that affect the skills that employers seek and entrepreneurs need.

(ii) Integration of academic and vocational education.

(iii) Efficient and effective practices for addressing the needs of special populations.

(iv) Efficient and effective methods for delivering vocational education.

(v) Articulation of school and college instruction with high quality work experience.

(vi) Recruitment, education, and enhancement of vocational teachers and other professionals in the field.

(vii) Accountability processes in vocational education, including identification and evaluation of the use of appropriate performance standards for student, program, and State-level outcomes.

(viii) Effective practices that educate students in all aspects of the industry the students are preparing to enter.

(ix) Effective methods for identifying and inculcating literacy and other communication skills essential for effective job preparation and job performance.

(x) Identification of strategic, high priority occupational skills and skills formation approaches needed to maintain the competitiveness of the United States workforce, sustain high-wage, high-technology jobs, and address national priorities such as technical jobs needed to protect and restore the environment.

(xi) Identification of practices and strategies that address entrepreneurial development for minority-owned enterprises.

(3) The applied research and development activities must include—

(i) An emphasis on the recruitment, education, and enhancement of minority and female vocational teachers and professionals; and

(ii) Activities that aid in the development of minorities and women for leadership roles in vocational education.

(b) *Dissemination and training activities.*

(1) A major purpose of the National Center is to design and conduct dissemination and training activities that are consistent with the purposes of the Act, including—

(i) The broad dissemination of the results of the research and development conducted by the National Center;

(ii) The development and utilization of a national level dissemination network including functions such as clearinghouses, databases, and telecommunications;

(iii) Planning, developing, and conducting training activities; and

(iv) Upon negotiation with the Center and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct dissemination and training activities that include the following:

(i) Teacher and administrator training and leadership development.

(ii) Technical assistance to ensure that programs serving special populations are effective in delivering well-integrated and appropriately articulated vocational and academic offerings for secondary, postsecondary, and adult students.

(iii) Needs assessment, design, and implementation of new and revised programs with related curriculum materials to facilitate vocational-academic integration.

(iv) Evaluation and follow-through to maintain and extend quality programs.

(v) Assistance in technology transfer and articulation of program offerings from advanced technology centers to minority enterprises.

(vi) Assistance to programs and States on the use of accountability indicators, including appropriate and innovative performance standards.

(vii) Delivery of information and services using advanced technology, if appropriate, to increase the effectiveness and efficiency of knowledge transfer.

(viii) Development of processes for synthesis of research, in cooperation with a broad array of users, including vocational and non-vocational educators, employers and labor organizations.

(ix) Dissemination of exemplary curriculum and instructional materials, and development and publication of curriculum materials (in conjunction with vocational and non-vocational constituency groups, if appropriate).

(x) Technical assistance in recruiting, hiring, and advancing minorities in vocational education.

(3) The training and leadership development activities must include an emphasis on—

(i) Training minority and female teachers; and

(ii) Programs and activities that aid in the development of minorities and women for leadership roles in vocational education.

(4) Advanced technology may include audio-video cassettes, electronic networking, satellite-assisted programming, computer-based conferencing, and interactive video.

(Authority: 20 U.S.C. 2404(b) and (c); House Report No. 101-660, 101st Cong. 2nd Sess. p. 143 (1990))

§413.4 How does the Secretary designate a National Center or Centers?

(a) The Secretary designates a National Center or Centers once every five years.

(b) In designating the National Center or Centers for Research in Vocational Education, the Secretary may support—

(1) One National Center that conducts both research and development activities and dissemination and training activities; or

(2) Two National Centers: one that conducts research and development activities and one that conducts dissemination and training activities.

(Authority: 20 U.S.C. 2404)

§413.5 What regulations apply?

The following regulations apply to the National Center or Centers:

(a) The regulations in this Part 413.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2404)

§413.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part, except that the term *institution of higher education* has the same meaning as provided in 34 CFR 403.117(b).

(Authority: 20 U.S.C. 1085(b) and 2404)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§413.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§413.21 and 413.22.

(b) The Secretary may award up to 100 points to each set of criteria in §§413.21 and 413.22, including a reserved 10 points for each set of criteria to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §§413.21 and 413.22.

(e) The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers. One competition will be held for research and development activities and the second competition will be held for dissemination and training activities. An institution of higher education or consortium of higher education institutions may submit a research and development application; a dissemination and training application; or both as separate applications under separate covers.

(f) The Secretary evaluates applications for the research and development center and the dissemination and training center independently against the criteria in §§413.21 and 413.22 whether an institution or consortium of institutions is competing for either or both sets of activities.

(g) In accordance with section 404(a)(5) of the Act, the Secretary will give preference in grant selection to institutions or consortia of institutions that demonstrate the ability to carry out both the research and development and the dissemination and training activities effectively, either directly or by contract.

(h) An institution or consortium of institutions that has submitted two applications and applied for a single grant for the purpose of carrying out both activities and that has earned 80 points or higher on each of its two applications, will be deemed by the Secretary to have demonstrated the ability to carry out both activities effectively.

(i) The Secretary will award a single grant to an institution or consortium of institutions that has both—

(1) Demonstrated the ability to carry out both program activities effectively, in accordance with paragraph (h) of this section; and

(2) Earned the highest combined score among those institutions or consortia of institutions that have demonstrated the ability to carry out both activities effectively.

(j) If no institution or consortium of institutions is selected for a single grant award, the institution or consortia of institutions ranking highest in each of the two competitions will each receive a grant award.

(Authority: 20 U.S.C. 2404)

§413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?

The Secretary uses the following selection criteria in evaluating each research and development application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required research and development activities described in §413.3(a)(2) will be of high quality and effective.

(b) *Plan of operation.* (35 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The applicant's plan for managing the National Center;

(2) The procedures the applicant will use to implement the National Center particularly with regard to the public or private nonprofit institution of higher education with which it is associated and, in the case of a consortium, with the other member institutions of the consortium;

(3) The applicant's plan for managing the National Center's activities and personnel, including—

(i) Quality control procedures for its activities;

(ii) Procedures for assuring compliance with timelines;

(iii) Coordination procedures for communicating among staff, subcontractors, members of the consortium, if any, and the Department of Education;

(iv) Procedures for ensuring that adequate progress is being made toward achieving the goals of the grantee by subcontractors, and members of a consortium; and

(v) Procedures for ensuring that adequate budget, accounting, and recordkeeping procedures will be used;

(4) The quality of the applicant's detailed plans for year one of the National Center, including—

(i) Methodology and plan of operation;

(ii) Tasks and timelines;

(iii) Deliverables; and

(iv) Dissemination plans for each project; and

(5) The quality of the applicant's general plans for developing appropriate, coherent, and effective vocational education research and development activities, or dissemination and training activities, or both, for years two through five.

(c) *Key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use for the National Center, including—

(1) The extent to which the Director of the National Center has—

(i) Appropriate professional qualifications, relevant project management experience, and administrative skills;

(ii) A commitment to work full-time at the National Center;

(iii) A clear commitment to the goals of the project; and

(iv) Sufficient authority to effectively manage the activities of the National Center;

(2) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(3) The extent to which other key personnel to be used for the National Center—

(i) Have experience and training in project management and in fields related to the proposed activities they will be carrying out; and

(ii) Will commit sufficient time to the project.

(d) *Vocational education experience.* (10 points) The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational education, including—

(1) The applicant's experience in conducting applied research and development activities, dissemination and training activities, or both, in the field of vocational education of the type described in §413.3;

(2) The applicant's capacity for conducting applied research and development activities, dissemination and training activities, or both, in the field of vocational education of the type described in §413.3; and

(3) How the activities of the National Center will contribute to the advancement of relevant theory and practice in vocational education.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The Center has an adequate budget that is cost effective;

(2) The budget is adequate to support the Center's activities; and

(3) Costs are reasonable in relation to the objectives of the Center.

(f) *Coordination activities.* (5 points) The Secretary reviews each application to determine the extent to which there is an effective plan for the coordination of activities described in §413.3(a) and (b), and whether these activities are carried out between two institutions or within one institution.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2404)

§413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

The Secretary uses the following selection criteria in evaluating each dissemination and training application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required dissemination and training activities, described in §413.3(b), will be of high quality and effective.

(b) The selection criteria and points in §413.21(b), (c), (d), (e), and (f).

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2404)

Subpart D—What Conditions Must Be Met After an Award?

§413.30 What are the restrictions on the use of funds?

(a) A National Center that performs both research and development activities and dissemination and training activities shall use at least two-thirds of its award for applied research and development.

(b) Not more than 10 percent of each year's budget for a National Center may be used to respond to field-initiated needs unanticipated prior to the annual funding period and that are in the mission of the National Center, but not part of the scope of work of the grant or cooperative agreement.

(Authority: 20 U.S.C. 2404(a)(3) and (b))

§413.31 Must a National Center have a director?

A National Center must have a full-time director who is appointed by the institution serving as the grantee.

(Authority: 20 U.S.C. 2404)

§413.32 What are the requirements for coordination?

If the Secretary designates two National Centers, the two centers must coordinate their activities.

(Authority: 20 U.S.C. 2404)

§413.33 What substantive studies must the National Center or Centers conduct and submit?

(a) The National Center conducting research and development activities shall annually prepare a study on the research conducted on approaches that lead to effective articulation for the education-to-work transition, including tech-prep programs, cooperative education or other work-based programs, such as innovative apprenticeship or mentoring approaches.

(b) The National Center conducting dissemination and training activities shall annually prepare a study of its dissemination and training activities.

(c) Annual studies described in paragraphs (a) and (b) of this section must be submitted to the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives.

(Authority: 20 U.S.C. 2404(b)(2) and (c)(2))

§413.34 What activities must be performed during the final year of an award?

During the fifth year of the award cycle, the National Center or Centers shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2404)

16. Part 414 is revised to read as follows:

PART 414—MATERIALS DEVELOPMENT IN TELECOMMUNICATIONS PROGRAM

Subpart A—General

Sec.

414.1 What is the Materials Development in Telecommunications Program?
414.2 Who is eligible for an award?
414.3 What activities may the Secretary fund?
414.4 What regulations apply?
414.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

414.20 What priorities may the Secretary establish?
414.21 How does the Secretary evaluate an application?
414.22 What selection criteria does the Secretary use?
414.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

414.30 What cost-sharing requirements must be met?

Authority: 20 U.S.C. 2412, unless otherwise noted.

Subpart A—General

§414.1 What is the Materials Development in Telecommunications Program?

The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges.

(Authority: 20 U.S.C. 2412)

§414.2 Who is eligible for an award?

A public or private nonprofit educational telecommunications entity is eligible for an award under this part.

(Authority: 20 U.S.C. 2412)

§414.3 What activities may the Secretary fund?

The Secretary may support, through grants or cooperative agreements, projects that develop, produce, and distribute—

(a) A sequential course of study that includes either pre-produced video courseware or direct interactive teaching delivered via satellite, accompanied by a variety of print and computer-based instructional materials;

(b) Individual videocassettes or a series of videocassettes that supplement instruction that must be distributed both via broadcast and non-broadcast means;

(c) Videodiscs that produce simulated hands-on training; or

(d) Teacher training programs for vocational educators and administrators and correctional educators.

(Authority: 20 U.S.C. 2412)

§414.4 What regulations apply?

The following regulations apply to the Materials Development in Telecommunications Program:

(a) The regulations in this Part 414.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2412)

§414.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2412)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§414.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the *Federal Register* the priorities for this program from the list of priorities in paragraph (b) of this section.

(b) In awarding grants under this part, the Secretary may give priority to programs or projects that serve—

(1) Students in area vocational and technical schools;

(2) Teachers, administrators, and counselors in need of training or retraining;

(3) Out-of-school adults in need of basic skills improvement or a high school equivalency diploma to improve the employability of these individuals;

(4) College students, particularly those who are working toward a two-year associate degree from a technical or community college;

(5) Workers in need of basic skills, vocational instruction, or career counseling to retain employment; or

(6) Workers who need to improve their skills to obtain jobs in high-growth industries.

(Authority: 20 U.S.C. 2412)

§414.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §414.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §414.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parenthesis after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §414.22.

(Authority: 20 U.S.C. 2412)

§414.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Educational significance.* (20 points) The Secretary reviews each application to assess the quality of the proposed project, including the extent to which the applicant—

(1) Provides a clear description of the plan to develop, produce, and distribute quality instructional telecommunications materials and services;

(2) Proposes using innovative techniques and approaches to educational problems and needs that are of national significance;

(3) Provides a clear description of how the proposed project will contribute to the improvement of education by promoting the use of instructional telecommunications materials and services in local vocational and technical educational schools and colleges;

(4) Provides a clear description of how the proposed project will provide electronic learning opportunities for populations described in §414.20(b)(1) - (6); and

(5) Describes a project that is likely to make a significant contribution to the use of telecommunications materials and services in vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals and relate to the purpose of this program;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The appropriateness of the time that each person referred to in paragraphs (c)(1)(i) and (iii) of this section will commit to the project; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (iii) of this section, the Secretary considers—

(i) The experience and training of key personnel in fields related to the objectives of the project;

(ii) The experience and training of key personnel in project management; and

(iii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is cost effective and adequate to support the project activities;

(2) The proposed expenditures for each budget category are justified in a budget

narrative; and

(3) Costs are necessary and reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine the effectiveness of the project in meeting the purposes of this program;

(3) Will determine the effect of the project on learning gains or competencies, or both, of persons being served by the project, especially, as appropriate—

(i) Students in area vocational and technical schools;

(ii) Teachers, administrators, and counselors in need of retraining;

(iii) Out-of-school adults in need of basic skills or a high school equivalency diploma;

(iv) College students in technical or community colleges; and

(v) Workers in need of basic skills, vocational instruction, or career counseling to retain employment.

(4) Will produce quantifiable data on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics and numbers of individual participants being served and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs; and

(iii) The effect of services on the quality of curricula, the retention of students in programs, and the academic and vocational competencies of students in vocational education programs.

(f) *Dissemination.* (10 points) The Secretary reviews each application to determine whether the applicant has an effective and efficient plan for disseminating information about the project, including—

(1) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials available, including information about the project, the results of the project, and any specialized materials developed by the project;

(3) Provisions for assisting others to adopt and successfully implement the projects or methods and techniques developed by the project; and

(4) Provisions for publicizing the findings of the project at the local, State, and national levels.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2412)

§414.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in §414.22, the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this program.

(Authority: 20 U.S.C. 2412)

Subpart D—What Conditions Must Be Met After an Award?

§414.30 What cost-sharing requirements must be met?

(a) *Federal share.*

(1) The Secretary pays no more than the Federal share of the cost of each project.

(2) The Federal share of the cost of each project assisted under this part is 50 percent.

(b) *Non-Federal share.* The non-Federal share of the cost of each project assisted under this part must be provided from non-Federal sources.

Cross-Reference: See 34 CFR Part 74, Subpart G—Cost Sharing or Matching.

(Authority: 20 U.S.C. 2412)

17. Part 415 is revised to read as follows:

PART 415—DEMONSTRATION CENTERS FOR THE TRAINING OF DISLOCATED WORKERS PROGRAM

Subpart A—General

Sec.

415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?

415.2 Who is eligible for an award?

415.3 What activities may the Secretary fund?

415.4 What regulations apply?

415.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

415.20 How does the Secretary evaluate an application?

415.21 What selection criteria does the Secretary use?

415.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

415.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2413, unless otherwise noted.

Subpart A—General

§415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?

The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers.

(Authority: 20 U.S.C. 2413(a))

§415.2 Who is eligible for an award?

A private nonprofit organization that is eligible to receive funding under Title III of the Job Training Partnership Act (29 U.S.C. 1651 *et seq.*) is eligible to receive an award under this program.

(Authority: 20 U.S.C. 2413(d))

§415.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements for one or more centers that demonstrate the retraining of dislocated workers.

(b) Each center funded by the Secretary must be designed and operated to provide for the use of appropriate existing Federal, State, and local programs and resources.

(c) Each center may use funds to provide for—

(1) The recruitment of unemployed workers;

(2) Vocational evaluation;

(3) Assessment and counseling services;

(4) Vocational and technical training;

(5) Support services; or

(6) Job placement assistance.

(Authority: 20 U.S.C. 2413(a))

§415.4 What regulations apply?

The following regulations apply to the Demonstration Centers for the Training of Dislocated Workers Program:

(a) The regulations in this Part 415.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2413)

§415.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2413)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§415.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §415.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §415.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §415.21.

(Authority: 20 U.S.C. 2413)

§415.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the extent to which the proposed demonstration center for the training of dislocated workers will—

(1) Be located in a service area with a high concentration of dislocated workers, as supported by specific evidence of the need for the proposed demonstration center;

(2) Provide vocational education and technical training to meet current and projected occupational needs;

(3) Provide trainees with appropriate vocational evaluation, assessment, and counseling, support services, and job placement assistance;

(4) Result in trainees becoming employed in jobs related to their training upon completion of their training; and

(5) Use other appropriate Federal, State, and local programs to retrain, or provide services to, dislocated workers.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed demonstration center for the training of dislocated workers on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs, in such factors as—

(i) Student performance and achievement in vocational and technical training;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use innovative techniques to address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective including the use of appropriate existing Federal, State, and local programs; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Identification of target groups and provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire demonstration center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to

the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2413)

§415.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in §415.21, the Secretary may select applications other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this program.

(Authority: U.S.C. 2413)

Subpart D—What Conditions Must Be Met After an Award?

§415.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2413)

18. Part 416 is revised to read as follows:

PART 416—VOCATIONAL EDUCATION TRAINING AND STUDY GRANTS PROGRAM

Subpart A—General

Sec.

416.1 What is the Vocational Education Training and Study Grants Program?
416.2 Who is eligible for an award?
416.3 What activities may the Secretary fund?
416.4 What regulations apply?
416.5 What definitions apply?

Subpart B—[RESERVED]

Subpart C—How Does the Secretary Make an Award?

416.20 How does the Secretary evaluate an application?
416.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must be Met After an Award?

416.30 Which individuals are eligible to participate under this program?
416.31 What are the responsibilities of the grantee?

Authority: 20 U.S.C. 2414(a), unless otherwise noted.

Subpart A—General

§416.1 What is the Vocational Education Training and Study Grants Program?

The Vocational Education Training and Study Grants Program provides financial assistance for vocational teacher education, undergraduate or graduate training in vocational education, and vocational education student internships.

(Authority: 20 U.S.C. 2414(a))

§416.2 Who is eligible for an award?

An institution of higher education, State education agency, or State correctional education agency is eligible for an award under this part.

(Authority: 20 U.S.C. 2414(a))

§416.3 What activities may the Secretary fund?

The Secretary supports grants or cooperative agreements for eligible agencies or institutions to provide—

(a) Undergraduate and graduate training in vocational education;

(b) Vocational teacher education; and

(c) Opportunities for further study and professional development for gifted and talented students in vocational education programs by interning with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§416.4 What regulations apply?

The following regulations apply to the Vocational Education Training and Study Grants Program:

(a) The regulations in this Part 416.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2414(a))

§416.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Stipend means funds used for room and board and personal living expenses, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 2414(a))

Subpart B—[RESERVED]

Subpart C—How Does the Secretary Make an Award?

§416.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §416.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §416.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §416.21.

(Authority: 20 U.S.C. 2414(a))

§416.21 What selection criteria does the Secretary use?

(a) *Project design*. (20 points) The Secretary reviews each application to determine the quality of the project design, including—

(1) The extent to which the applicant understands and has responded to any program priorities announced in the *Federal Register* for the grant competition;

(2) The geographic area to be served and of the specific training or internships to be provided, including the purposes of the training or internships;

(3) The objectives of the project;

(4) The institutional and participant selection procedures;

(5) How resources and personnel (including resources and personnel of other entities) will be used to achieve each objective;

(6) When in each budget period the applicant plans to meet each objective;

(7) The extent to which the design of the project is practical and effective to achieve the purposes and goals in §416.3; and

(8) The extent to which the management plan provides adequately for monitoring,

supervising, and evaluating all entities and individuals participating in the project.

(b) *Applicant commitment and experience.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The applicant's selection procedures, including priorities and criteria, will be effective for selecting the institutions, agencies, organizations, and Center or Centers in which trainees will be placed; and

(2) The applicant has demonstrated competence and experience in operating training or internship programs similar to that proposed, including how, if applicable, its capabilities will be extended through subgrants, contracts, or agreements with other entities. If subgrants, contracts, or agreements with other entities are proposed, the applicant must include copies of the written agreements covering the intent of all proposed entities to participate with the applicant in achieving the purposes and objectives of the proposed project.

(c) *Key personnel.* (20 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The names and qualifications of key personnel, including the project director. If the names of key persons are not yet known, the applicant shall specify the minimum qualifications that will be used to select them;

(2) The qualifications of key personnel intended to be used under subgrants, contracts, or agreements and designation of their employment affiliation. If key personnel from other entities will be used, the applicant shall include copies of their stated intent to participate and copies of the concurrence of the entity by which they are employed to make them available for the time specified in the application;

(3) The extent to which key personnel are adequate and appropriate to achieve the objectives of the proposed project;

(4) Whether the allocation of time of key personnel to the objectives of the project seems adequate to predict achievement; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(d) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of resources the applicant plans to use, including the extent to which the applicant—

(1) Will use its resources and those of other participating entities effectively to accomplish the purposes and objectives of the proposed project;

(2) Will devote adequate financial and material resources to the project being proposed; and

(3) Will use adequate facilities and equipment for the project being proposed.

(e) *Participant recruitment and selection plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Will make information about the learning opportunities, the financial support to be provided, eligibility requirements, and the applicant's selection criteria broadly available to all individuals eligible to participate in the project;

(2) Has proposed participant selection criteria for each training or internship activity that are consistent with §416.30; and

(3) Will ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation of the accomplishment of the purposes and objectives of the project, including—

(1) An evaluation of student participation by sex, race or ethnic group, and language proficiency for each vocational education category and each target position in vocational education for which training or internships are intended to prepare recipients;

(2) Comparing the active career pursuits and career goals of program participants before and after participation in training or an internship under the project; and

(3) Analyzing the completeness and accuracy of and synthesizing grantee records on the level of participation and progress of project participants in their learning pursuits and the level and timing of disbursements and recovery of financial support in relation thereto.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(a))

Subpart D—What Conditions must be Met after an Award?

§416.30 Which individuals are eligible to participate under this program?

(a) The following individuals are eligible for training under this program:

(1) Experienced vocational educators who want to participate in advanced study of vocational education.

(2) Certified teachers who have been trained to teach in other fields and who want to become teachers of vocational education students, including teachers with skills related to vocational fields who can be trained as vocational educators, and especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminal offenders.

(3) Individuals in industry who have skills and experience in vocational fields and who want to be trained as vocational educators.

(4) Vocational educators who want to improve or maintain technological currency in their fields.

(b) Gifted and talented vocational education secondary and postsecondary students are eligible under this program for internships with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§416.31 What are the responsibilities of the grantee?

(a) A grantee carrying out activities under §416.3(a) and (b) shall—

(1) Provide training directly, or, in the case of a State educational agency or a State correctional education agency, provide for training through a contract;

(2) Select individuals for participation in training activities; and

(3) Determine the amounts participants will receive for training, fellowships, stipends, or travel allowances.

(b) A grantee carrying out activities under §416.3(c) shall—

(1) Select individuals for participation;

(2) Coordinate with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education that are willing to participate with the project in providing internships for further study and professional development for gifted and talented vocational education students; and

(3) Determine the amount participants will receive for subsistence allowance and other expenses such as necessary travel expenses related to participation.

(c) All grantees shall—

(1) Monitor, supervise, maintain records on, and report on the level and type of participation, and on the conditions and progress of the institutions, agencies, associations, Centers, and individuals involved in the project; and

(2) Evaluate, either directly or through a contract, and report on the accomplishment of the purposes and objectives of the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(a))

19. Part 417 is revised to read as follows:

PART 417—VOCATIONAL EDUCATION LEADERSHIP DEVELOPMENT AWARDS PROGRAM

Subpart A—General

Sec.
417.1 What is the Vocational Education Leadership Development Awards Program?
417.2 Who is eligible for an award?
417.3 What activities may the Secretary fund?
417.4 What regulations apply?
417.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

417.20 How does the Secretary evaluate an application?
417.21 What selection criteria does the Secretary use?
417.22 What additional factors does the Secretary consider?

Subpart D—What are the Administrative Responsibilities of Institutions?

417.30 What is the role of the institution in the administration of leadership development awards?
417.31 What selection criteria and procedures must an institution use in selecting students?
417.32 What are the special requirements regarding leadership development awards?
417.33 How are funds disbursed and returned?
417.34 Under what circumstances must an institution terminate a leadership development award?

Subpart E—How Does An Individual Apply for a Leadership Development Award?

417.40 Which individuals are eligible for an award?
417.41 How does an individual apply to an institution for a leadership development award?

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

417.50 May a course of study be interrupted?
417.51 Under what conditions must a leadership development award be returned?
417.52 What is the repayment schedule?
417.53 What interest is charged?
417.54 Under what circumstances is repayment deferred?
417.55 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(b), unless otherwise noted.

Subpart A—General

§417.1 What is the Vocational Education Leadership Development Awards Program?

The Vocational Education Leadership Development Awards Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs.

(Authority: 20 U.S.C. 2414(b))

§417.2 Who is eligible for an award?

An institution of higher education is eligible for an award under this part if it offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, and that program is—

(a) Designed to substantially advance the objective of improving vocational education in the State through providing opportunities for graduate training of teachers of vocational education students, vocational supervisors and administrators, and university-level vocational education teacher educators and researchers; and

(b) Conducted by a school of graduate study in the institution of higher education.

(Authority: 20 U.S.C. 2414(b)(4))

§417.3 What activities may the Secretary fund?

The Secretary provides grants to institutions for leadership development awards to individuals.

(Authority: 20 U.S.C. 2414(b))

§417.4 What regulations apply?

The following regulations apply to the Vocational Education Leadership Development Awards Program:

(a) The regulations in this Part 417.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2414(b))

§417.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Academic year means a period of time in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) At least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours, but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Full-time course of study means the number of credit hours that an institution requires of a full-time student.

Full-time student means a student who—

(1) Carries a full-time course of study; and

(2) Is not employed for more than 20 hours a week.

Satisfactory proficiency means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

(Authority: 20 U.S.C. 2414(b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§417.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §417.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §417.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §417.21.

(Authority: 20 U.S.C. 2414(b))

§417.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institutional commitment and experience.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The institution has resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education.

(2) The institution's vocational education program has been adopted as a permanent graduate program of study;

(3) The institution demonstrates competence and experience in programs and activities similar to those authorized under the Act;

(4) The applicant provides adequate

documentation that its vocational education program meets the requirements in §417.2; and

(5) The institution's vocational education program will address the need in the State for improving the quality and quantity of vocational personnel, including those referred to in §417.1.

(b) *Academic program.* (15 points) The Secretary reviews each application to determine the adequacy of the institution's academic program including the—

(1) Range of course offerings and level and number of academic requirements for students; and

(2) Institutions's demonstrated success in preparing individuals for professional or academic careers in the vocational education field.

(c) *Key faculty.* (15 points) The Secretary reviews each application to determine the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(d) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the academic area, including the adequacy of—

(1) The facilities the applicant plans to use; and

(2) The equipment the applicant plans to use.

(e) *Recruitment plan.* (10 points) The Secretary considers the quality of an institution's plan for selecting graduate students, including—

(1) A description of how the institution will apply the requirements in §417.31; and

(2) The extent to which the institution will make available to all individuals eligible to participate information about learning opportunities, the financial support available, eligibility requirements, and the institutions's criteria for selecting participants.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation—

(1) Of student participation by sex and racial or ethnic groups in relation to such indicators of need as the State's vocational education enrollments and the need for additional vocational education leadership in the State;

(2) Of the extent to which selection criteria and procedures used resulted in student participants who meet the eligibility requirements in §417.40;

(3) Of the accuracy and validity of records on the level of participation and progress of program participants in their learning pursuits, and the appropriateness of the level and timing of disbursements in relation thereto; and

(4) Comparing the active career pursuits and career goals of participants before and after participating in the program to determine the extent to which they enter for the first time, returned to, or advance in work in vocational education in a leadership position.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(b))

§417.22 What additional factors does the Secretary consider?

(a) In addition to the criteria in §417.21, the Secretary determines whether the most highly rated applicants are—

(1) Equitably distributed among the States; and

(2) Located in States that need additional vocational education personnel.

(b) The Secretary may select other applicants for funding if doing so would improve the equitable distribution of projects geographically and among the States needing additional trained personnel.

(Authority: 20 U.S.C. 2414(b)(5))

Subpart D—What are the Administrative Responsibilities of Institutions?

§417.30 What is the role of an institution in the administration of leadership development awards?

An institution receiving an award under this part is responsible for—

(a) Administering the grant;

(b) Accepting, screening, and selecting individual applications in accordance with its own technical and academic criteria; and

(c) Disbursing and returning funds in accordance with procedures described in §§417.33 and 417.34, including making appropriate adjustments of any overpayment or underpayment to a recipient of a leadership development award.

(Authority: 20 U.S.C. 2414(b))

§417.31 What selection criteria and procedures must an institution use in selecting students?

(a) An institution of higher education shall establish competitive selection criteria and procedures that reflect the needs of the State for qualified vocational education personnel, only after consultation with the State's vocational education leaders (such as administrators, researchers, and teachers) and analysis of relevant statewide data, including the State's vocational education enrollments.

(b) The institution shall design the selection criteria and procedures to ensure that it selects individuals—

(1) On the basis of demonstrated leadership potential, promise of continued achievement, and commitment;

(2) On the basis of the standards in §417.40;

(3) Without regard to race, color, national origin, gender, age, disability, or economic background; and

(4) Without regard to financial need.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(b))

§417.32 What are the special requirements regarding leadership development awards?

(a) Leadership development awards to individuals—

(1) May not exceed $9,000 per individual per academic year or its equivalent and $3,000 per individual per summer session or its equivalent;

(2) May not be paid for more than three years; and

(3) May cover only expenses that are consistent with prevailing practices of the institution, including—

(i) Tuition and books;

(ii) Non-refundable fees;

(iii) A subsistence allowance for the individual and his or her dependents; and

(iv) Other expenses the institution deems necessary and reasonable and consistent with prevailing practices.

(b) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(c) The total financial assistance provided to an individual from all sources, other than loans, may not exceed the individual's need for that assistance.

(d) An institution may not provide a leadership development award to an individual who is not a full-time student.

(Authority: 20 U.S.C. 2414(b)(2) and (6))

§417.33 How are funds disbursed and returned?

(a) The institution shall disburse a leadership development award to an individual in no fewer than two installments per academic year.

(b) An institution shall make an award only to an individual who is in good standing and is making satisfactory progress.

Cross-Reference: See §417.34(a)

(c) Before considering a leadership development award for new individuals, the Secretary provides payment to continue support for qualified individuals who—

(1) Received an award under this program in the previous year; and

(2) Are maintaining satisfactory progress as determined by the institution.

(d) If a leadership development award is vacated or discontinued, the institution shall notify the Secretary. The Secretary—

(1) Allows the award to follow the

individual to another participating institution if the remaining award time comprises at least one academic quarter, semester, trimester, or summer session; or

(2) Permits the institution to use any unexpended funds from an award to make an award to an alternate applicant at that institution for a period of study that does not exceed the terms or amount of the original award.

(e) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(b))

§417.34 Under what circumstances must an institution terminate a leadership development award?

An institution shall—

(a) Terminate a leadership development award if the recipient of an award—

(1) Is not pursuing a full-time course of study in vocational education;

(2) Is not maintaining satisfactory proficiency in the course of study;

(3) Is engaged in gainful employment other than part-time employment by the institution in teaching, research, or similar activities;

(4) Is no longer enrolled, or is no longer in good standing at the institution; or

(5) Fails to follow the prescribed course of study for which he or she applied, unless a revised course of study is approved under this part;

(b) Terminate an award only after providing reasonable notice and an opportunity for the individual to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision; and

(c) Ensure that a recipient of a leadership development award repays all or a prorated portion of an award in accordance with the provisions in §§417.51 through 417.55.

(Authority: 20 U.S.C. 2414(b))

Subpart E—How Does an Individual Apply for a Leadership Development Award?

§417.40 Which individuals are eligible for an award?

An individual is eligible for an award if the institution participating under this part determines that the individual—

(a) Has at least three years of experience in vocational education or in industrial training, or, in the case of researchers, experience in social science research that is applicable to vocational education;

(b) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed at least a baccalaureate degree program;

(c) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and has been accepted for admission as a graduate student in an institution participating under this part; and

(d) Has made a commitment to return to the field of vocational education upon completion of education provided through the Vocational Education Leadership Development Award Program.

(Authority: 20 U.S.C. 2414(b))

§417.41 How does an individual apply to an institution for a leadership development award?

To apply for an award, an individual shall—

(a) Follow the application procedures established by an institution participating under this part; and

(b) Provide sufficient information concerning his or her employment experience and academic background to enable the institution to determine whether the individual is eligible to receive an award, taking into consideration the standards in §417.40.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(b))

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

§417.50 May a course of study be interrupted?

The Secretary approves a leadership development award only for study in the field and at the institution specified in an individual's application. The Secretary or the institution discontinues the leadership development award if the individual changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(b))

§417.51 Under what conditions must a leadership development award be returned?

(a) An individual shall repay to the institution all, or a prorated portion, of a leadership development award, as determined by the Secretary, if the individual—

(1) Withdraws from an approved institution of higher education;

(2) Is terminated or expelled from an approved institution of higher education; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements stated in §417.34(a).

(b) An individual shall repay all, or a portion of, amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(b))

§417.52 What is the repayment schedule?

(a) A recipient of a leadership development award required to repay all, or a prorated portion, of the award shall begin repayments to the institution within one month of the date he or she ceases to be enrolled as a full-time student at an institution in the leadership development program.

(b) A recipient of a leadership development award must repay to the institution the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(b))

§417.53 What interest is charged?

(a) The Secretary charges a recipient of a leadership development award interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under §417.54.

(Authority: 20 U.S.C. 2414(b))

§417.54 Under what circumstances is repayment deferred?

Upon request from the recipient of a leadership development award, the Secretary may defer repayment if the recipient—

(a) Re-enrolls as a full-time student at a participating institution;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(b))

§417.55 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient of a leadership development award shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace

Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(b))

20. A new Part 418 is added to read as follows:

PART 418—VOCATIONAL EDUCATOR TRAINING FELLOWSHIPS PROGRAM

Subpart A—General

Sec.
418.1 What is the Vocational Educator Training Fellowship Program?
418.2 Who is eligible for a fellowship?
418.3 What does a fellowship include?
418.4 What regulations apply?
418.5 What definitions apply?

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

418.10 How does the Secretary approve IHEs for participation?

Subpart C—How Does An Individual Apply for a Fellowship?

418.20 Where does an individual apply for a fellowship?

Subpart D—How Does the Secretary Select Fellows?

418.30 How does the Secretary select fellows?
418.31 What criteria must IHEs consider in nominating fellows?
418.32 What additional factors does the Secretary consider in selecting fellows?
418.33 How are funds distributed to a fellow?

Subpart E—What Conditions Must be Met by a Fellow?

418.40 Where may fellows study?
418.41 What are the requirements for an individual to continue to receive a fellowship?
418.42 May fellowship tenure be interrupted?
418.43 May fellows make changes in institutions or fields of study?
418.44 Under what circumstances must a fellowship be discontinued?
418.45 Under what conditions must fellowship payments be repaid?
418.46 What is the repayment schedule?
418.47 What interest is charged?
418.48 Under what circumstances is repayment deferred?
418.49 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(c), unless otherwise noted.

Subpart A—General

§418.1 What is the Vocational Educator Training Fellowship Program?

Under the Vocational Educator Training Fellowship Program, the Secretary provides fellowships to individuals through approved institutions of higher education (IHEs) to—

(a) Meet the need to provide adequate numbers of teachers and related classroom instructors in vocational education who are technologically current in their fields;

(b) Take full advantage of the education that has been provided to already certified teachers who are unable to find employment in their fields of training and of individuals employed in industry who have skills and experience in vocational fields; and

(c) Encourage more instructors from minority groups and teachers with skills and experience instructing individuals of limited English proficiency to become vocational education teachers.

(Authority: 20 U.S.C. 2414(c)(1))

§418.2 Who is eligible for a fellowship?

Fellowships are awarded to individuals (especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals) who—

(a)(1)(i) Are teachers of vocational education students and need an opportunity to improve or maintain technological skills;

(ii) Are certified by a State, or were so certified during the 10-year period preceding their application for a fellowship under this part, as teachers in secondary schools, area vocational education schools or institutes, or in community or junior colleges; and

(iii) Have skills and experiences in vocational fields so that those individuals can be trained to be teachers of vocational education students; or

(2) Are employed in agriculture, business, or industry (and may or may not hold a baccalaureate degree) and have skills and experience in vocational fields for which there is a need for vocational educators;

(b) Have been accepted in a program to become a vocational educator by an institution of higher education approved by the Secretary; and

(c) Have made a commitment to work in the field of vocational education upon completion of the fellowship provided under this program.

(Authority: 20 U.S.C. 2414(c)(2))

§418.3 What does a fellowship include?

(a) A fellowship may not be paid for more than two years.

(b) *Allowable costs.* A fellow may use fellowships under this program for—

(1) Tuition and non-refundable fees—the normal and usual costs associated with the course of study;

(2) Books;

(3) Travel to a field study site; and

(4) Subsistence and other expenses of the fellow and his or her dependents.

(c) The Secretary announces in the *Federal Register* the maximum amounts for each allowable cost under a fellowship. These maximum amounts are based on the prevailing amounts for costs during the past 12 months, plus projected inflationary increases.

(Authority: 20 U.S.C. 2414(c))

§418.4 What regulations apply?

The following regulations apply to the Vocational Educator Training Fellowship Program:

(a) The regulations in this Part 418.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2414(c))

§418.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following terms used in this regulation are defined in 34 CFR 417.5:

Dependent
Full-time course of study
Satisfactory proficiency

(c) The following definitions also apply to this part:

Fellow means the individual recipient of a fellowship under this part.

Fellowship means an award made to an individual for vocational educator training under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

§418.10 How does the Secretary approve IHEs for participation?

The Secretary considers for participation only IHEs that—

(a) Offer a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, including resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education; and

(b) Will enroll in its vocational education program individuals receiving fellowships under this part so that those individuals receive the same quality of education and training provided for undergraduate students at the institution who are preparing to become vocational education teachers.

(Authority: 20 U.S.C. 2424(c))

Subpart C—How Does an Individual Apply for a Fellowship?

§418.20 Where does an individual apply for a fellowship?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) The applicant shall provide sufficient information in the application as required by institution concerning his or her employment and academic background and proposed course of study, to enable an institution and the Secretary to determine whether the individual—

(1) Meets the eligibility requirements indicated in §418.2; and

(2) Should be selected for a fellowship under this part.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(c))

Subpart D—How Does the Secretary Select Fellows?

§418.30 How does the Secretary select fellows?

In selecting recipients of fellowships, the Secretary—

(a) Gives preference to individuals seeking to become teachers or improve their skills in the areas identified in §418.32(b); and

(b) Takes into consideration the rank orders prepared by participating IHEs.

(Authority: 20 U.S.C. 2414(c)(7))

§418.31 What criteria must IHEs consider in nominating fellows?

In rank ordering applicants for fellowships, an IHE shall consider the following criteria in addition to its admissions standards:

(a) *Eligibility.* Whether the applicant meets the requirements in §418.2, especially with regard to minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals.

(b) *Academic ability.* The quality of the applicant's academic record, including—

(1) Transcripts of grades earned in secondary school and, if appropriate, postsecondary education;

(2) Results earned on specific skill aptitude tests; and

(3) Results of other tests, if appropriate.

(c) *Vocational skills.* Evidence of the applicant's performance in a work situation requiring vocational skills, including—

(1) Letters of recommendations from previous employers or others, as appropriate;

(2) Results of National Occupational Competency Testing Institute tests, if appropriate;

(3) Certificates or diplomas, as appropriate; and

(4) Work related experience, including teaching, if appropriate.

(d) *Community human relations skills.* Evidence of the applicant's skills in interpersonal relations, including experience with—

(1) Community groups;

(2) Volunteer groups;

(3) Work-related organizations;

(4) Members of minority groups;

(5) Economically or educationally disadvantaged individuals, or individuals with disabilities; and

(6) Adult and juvenile criminal offenders; and other groups, as appropriate.

(e) *National need.* As stated by the applicant in writing, the applicant's goals, objectives, and aspirations in vocational education, and their relationship to national needs with particular reference to—

(1) Technological skill upgrading; and

(2) Increasing the number of instructors who—

(i) Are members of minority groups; and

(ii) Possess skills and experience in teaching individuals who are economically disadvantaged, individuals with disabilities, individuals of limited English proficiency, and adult and juvenile criminals.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(c))

§418.32 What additional factors does the Secretary consider in selecting fellows?

The Secretary may choose fellows out of rank order if doing so would—

(a) Improve the equitable distribution of fellowships among the States, taking into account such factors as—

(1) The State's vocational education enrollments; and

(2) The need in the State for additional instructors of vocational education students, especially minority educators and individuals with skills and experience in teaching individuals of limited English proficiency, individuals who are economically disadvantaged, individuals with disabilities, and adult and juvenile criminal offenders; and

(b) Increase the number of trained persons in the areas of teaching in vocational education—

(1) In which additional personnel are needed;

(2) That will likely have need of additional personnel in the future; and

(3) In which technological upgrading may be especially critical.

(Authority: 20 U.S.C. 2414(c)(2), (4), and (6)(A))

§418.33 How are funds distributed to a fellow?

(a) Funds are disbursed by the participating IHE in which a fellow is enrolled.

(b) A participating institution shall award to each fellow a fellowship that covers costs described in §418.3.

(c) An institution shall—

(1) Pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship;

(2) Make a payment only to a fellow who meets the requirements in §418.41;

(3) Make appropriate adjustments of any overpayment or underpayment to a fellow; and

(4) Ensure that a fellow repays all or a prorated portion of an award in accordance with the provisions in §§418.45 through 418.49.

(d) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(Authority: 20 U.S.C. 2414(c))

Subpart E—What Conditions Must Be Met by a Fellow?

§418.40 Where may fellows study?

Fellows may use fellowships under this part only at institutions that have been approved under this part.

(Authority: 20 U.S.C. 2414(c))

§418.41 What are the requirements for an individual to continue to receive a fellowship?

A participating IHE shall continue to pay fellowships only during a period in which the fellow is—

(a) Maintaining satisfactory proficiency;

(b) Engaging in full-time study in the field of vocational education in an institution of higher education; and

(c) Not engaging in gainful employment other than part-time employment with the institution.

(Authority: 20 U.S.C. 2414(c)(5))

§418.42 May fellowship tenure be interrupted?

(a) With prior approval of the Secretary, a fellow may interrupt periods of vocational educator study under the fellowship for a period of up to 12 months for the purpose of work, travel, or independent study away from the institution of higher education at which the fellow is enrolled only if the—

(1) Work, travel, or independent study is supportive of the fellow's academic program;

(2) Leave of absence is approved by the institution at which the fellow is enrolled; and

(3) IHE certifies, to the Secretary in advance of the leave, that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(b) An institution may not make fellowship payments under this part for a period of time during which a fellowship is interrupted.

(Authority: 20 U.S.C. 2414(c))

§418.43 May fellows make changes in institutions or fields of study?

The Secretary approves a fellowship only for study in the field of study and at the institution specified in the fellow's application. The Secretary or the institution discontinues the fellowship if the fellow changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(c))

§418.44 Under what circumstances must a fellowship be discontinued?

(a) An institution shall discontinue a fellowship—

(1) If a fellow fails to comply with the provisions under this part; and

(2) Only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(b) If a fellowship is vacated or discontinued the institution shall notify the Secretary. The Secretary—

(1) Allows the fellowship to follow the fellow to another participating IHE if the remaining fellowship time comprises at least one full academic quarter, semester, trimester, or summer session and the fellow maintains eligibility for a fellowship; or

(2) Permits the institution to award unexpended funds from a fellowship to an alternate fellow at that institution for a period of study that does not exceed the term or amount of the original fellowship.

(3) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(c))

§418.45 Under what conditions must fellowship payments be repaid?

(a) A fellow shall repay to the institution the entire fellowship, or a prorated portion, as determined by the Secretary, if the fellow—

(1) Withdraws from an institution;

(2) Is terminated or expelled from an institution; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements in this part.

(b) A fellow shall refund all or a portion of amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(c))

§418.46 What is the repayment schedule?

(a) A fellow required to repay all, or a prorated portion, of a fellowship shall begin repayments within one month of the date he or she ceases to be enrolled as a full-time student at an IHE in the fellowship program.

(b) A fellow must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(c))

§418.47 What interest is charged?

(a) The Secretary charges a fellow interest on the unpaid balance owed by the fellow in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under §418.48.

(Authority: 20 U.S.C. 2414(c))

§418.48 Under what circumstance is repayment deferred?

Upon request from a fellow, the Secretary may defer repayment if the fellow—

(a) Re-enrolls as a full-time student at a participating IHE;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(c))

§418.49 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a fellow shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(c))

21. A new Part 419 is added to read as follows:

PART 419—INTERNSHIPS FOR GIFTED AND TALENTED VOCATIONAL EDUCATION STUDENTS PROGRAM

Subpart A—General

Sec.

419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?
419.2 Who is eligible for an internship?
419.3 What activities may the Secretary fund?
419.4 What regulations apply?
419.5 What definitions apply?

Subpart B—[RESERVED]

Subpart C—How Does the Secretary Select Interns?

419.20 What are the procedures for applying for an internship?
419.21 How does the Secretary evaluate an application for an internship?
419.22 What selection criteria does the Secretary use?
419.23 What other factors may the Secretary consider?
419.24 How does the Secretary assign interns?
419.25 How is the amount of a stipend determined?
419.26 How is a stipend distributed?

Subpart D—What Conditions Must be Met By an Intern?

419.30 May internships be interrupted?
419.31 Under what conditions may the Secretary discontinue an internship?
419.32 Under what conditions must internship payments be returned?
419.33 What is the repayment schedule?
419.34 What interest is charged?
419.35 Under what circumstance is repayment deferred?
419.36 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(d), unless otherwise noted.

Subpart A—General

§419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?

The Internships for Gifted and Talented Vocational Education Students Program provides internships to meet the need of attracting gifted and talented vocational education students into further study and professional development in the field of vocational education.

(Authority: 20 U.S.C. 2414(d)(1))

§419.2 Who is eligible for an internship?

A gifted and talented student from a vocational education secondary or postsecondary program is eligible for an internship under this program if the student is recommended—

(a) As gifted and talented by a vocational educator at the secondary or postsecondary school the student attends; and

(b) By a State director of vocational

education.

(Authority: 20 U.S.C. 2414(d)(2))

§419.3 What activities may the Secretary fund?

The Secretary provides internships, of up to nine months, for gifted and talented students from vocational education secondary and postsecondary programs to work as interns for Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(d)(2)(A))

§419.4 What regulations apply?

The following regulations apply to the Internships for Gifted and Talented Vocational Education Students Program:

(a) The regulations in this Part 419.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2414(d))

§419.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Gifted and talented student means a student who gives evidence of high performance capability in the field of vocational education, taking into account theoretical knowledge, applied skills, and leadership potential.

Intern means a gifted and talented student who receives payments under this program.

Sponsor means a Federal or State agency, nationally recognized vocational education association, or National Center for Research in Vocational Education that has agreed to provide further study and professional development to interns under this program.

(Authority: 20 U.S.C. 2414(d))

Subpart B—[RESERVED]

Subpart C—How Does the Secretary Select Interns?

§419.20 What are the procedures for applying for an internship?

(a) A gifted and talented vocational education student shall apply to the Secretary for an internship in response to an application notice published by the Secretary in the *Federal Register*.

(b) A student applying for an internship shall—

(1) Obtain a recommendation as gifted and talented from a vocational educator at the secondary or postsecondary school the student attends. The recommendation must state why the student is considered gifted and talented. The recommendation must be attached to the student's application;

(2) Submit to the State director of vocational education for the State in which the student attends a vocational education program, a copy of his or her application;

(3) Indicate, in the application, a first and second choice of agencies or organizations where the student would like to be an intern; and

(4) Submit with the application, an agreement to follow the code of conduct of the agency or organization that will sponsor the intern.

(c) The Secretary considers for internships only students recommended by State directors of vocational education. The State director's recommendation must include an assurance that—

(1) The student is available to take part in this program during the specified dates;

(2) A parent or guardian of a student who has not reached the age of majority in a State has formally consented for the student to take part in this program; and

(3) The secondary or postsecondary school the student attends has provided authorization for the student to participate in this program, if the internship will interfere with school attendance.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(d))

§419.21 How does the Secretary evaluate an application for an internship?

(a) The Secretary evaluates an application on the basis of the criteria in §419.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §419.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §419.22.

(Authority: 20 U.S.C. 2414(d))

§419.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Goal of the internship.* (30 points) The Secretary reviews each application to determine the extent to which there—

(1) Is a clearly stated goal to be achieved during the internship. This goal must be directly related to the present area of study the student is pursuing; and

(2) Are measurable objectives to be met during the internship.

(b) *Internship plan.* (40 points) The Secretary reviews each application to determine the quality of the internship plan, including—

(1) Choice of internship site;

(2) Statement of understanding from the proposed sponsor, including a description of the—

(i) Sponsoring agency's internship work plan, including specific assignments and learning experiences; and

(ii) Supervision to be provided to the intern through the sponsoring agency; and

(3) The length and description of the internship.

(c) *Budget.* (15 points) The Secretary reviews each application to determine the extent to which the intern has identified expenses that are reasonable and adequate to support the proposed internship.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(d))

§419.23 What other factors may the Secretary consider?

(a) After evaluating the applications according to the criteria in §419.22, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of internships funded under this program.

(Authority: 20 U.S.C. 2301, 2414(d))

§419.24 How does the Secretary assign interns?

(a) In assigning students to internships, the Secretary considers the following:

(1) The opportunities to be provided by approved agencies or organizations.

(2) The goals of potential interns.

(3) The intern's choice of agencies or organizations.

(4) The availability of interns.

(b) In consultation with approved sponsors, the Secretary assigns interns to an agency or organization that will provide the best opportunities for an intern to accomplish his or her goals.

(Authority: 20 U.S.C. 2414(d))

§419.25 How is the amount of a stipend determined?

An intern's stipend is based on a subsistence allowance and other expenses of the intern, such as necessary travel expenses related to the internship, consistent with 5 U.S.C. Chapter 57.

(Authority: 20 U.S.C. 2414(d))

§419.26 How is a stipend distributed?

The Secretary pays an intern's stipend through the agency or organization sponsoring the internship. The sponsoring agency or organization must enter into an agreement with the Secretary to establish a payment schedule.

(Authority: 20 U.S.C. 2414(d))

Subpart D—What Conditions Must be Met by an Intern?

§419.30 May internships be interrupted?

An intern may request a leave of absence from the Secretary for a period no longer than three months. Leave of absence is permitted at the Secretary's discretion, but only if the sponsoring agency or organization certifies that the intern is eligible to resume his or her internship at the end of the leave of absence.

(Authority: 20 U.S.C. 2414(d))

§419.31 Under what conditions may the Secretary discontinue an internship?

(a) The Secretary may discontinue an internship, if the intern fails to—

(1) Comply with the provisions under this part, including failure to obtain an approved leave of absence under §419.30, or with the terms and conditions of the internship award;

(2) Disclose any information that substantially affects his or her financial need for a cost item included in the stipend; or

(3) Report any change in his or her academic status.

(b) The Secretary discontinues an internship only after providing reasonable notice and an opportunity for the intern to rebut, in writing or in an informal meeting with the responsible official in the Department, the basis for the decision.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(d))

§419.32 Under what conditions must internship payments be returned?

(a) An intern who officially or unofficially withdraws from an internship or is expelled from an agency or organization before completion of an internship shall refund to the Secretary all or a prorated portion of the internship payments that have been received, as determined by the Secretary.

(b) If the individual is no longer eligible for an internship, the intern must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program. The amount of unexpended funds is determined by prorating the amount received for the internship in proportion to the amount of the internship during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(d))

§419.33 What is the repayment schedule?

(a) An intern required to repay all or a portion of internship payments shall begin repayments within one month of the date he or she ceases to be an intern.

(b) An intern must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(d))

§419.34 What interest is charged?

(a) The Secretary charges an intern interest on the unpaid balance owed by an intern in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the intern is required to commence repayment; or

(2) During which repayment has been deferred under §419.35.

(Authority: 20 U.S.C. 2414(d))

§419.35 Under what circumstance is repayment deferred?

The Secretary may defer repayment if an intern—

(a) Resumes an internship;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(d))

§419.36 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, an intern shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(d))

PART 420—[RESERVED].

22. Part 420 is [RESERVED].

23. A new Part 421 is added to read as follows:

PART 421—BUSINESS AND EDUCATION STANDARDS PROGRAM

Subpart A—General

Sec.

421.1 What is the Business and Education Standards Program?
421.2 Who is eligible for an award?
421.3 What activities may the Secretary fund?
421.4 What regulations apply?
421.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

421.20 How does the Secretary evaluate an application?
421.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

421.30 What is the cost-sharing requirement?

Authority: 20 U.S.C. 2416, unless otherwise noted.

Subpart A—General

§421.1 What is the Business and Education Standards Program?

The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

§421.2 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) Industrial trade associations.

(b) Labor organizations.

(c) National joint apprenticeship committees.

(d) Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

(Authority: 20 U.S.C. 2416)

§421.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects that organize and operate business-labor-education technical committees that propose national standards for competencies in industries and trades, including standards for—

(a) Major divisions or specialty areas identified within occupations studied;

(b) Minimum hours of study to be competent in those divisions or specialty areas;

(c) Minimum tools and equipment required in those divisions or specialty areas;

(d) Minimum qualifications for instructional staff; and

(e) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas.

(Authority: 20 U.S.C. 2416)

§421.4 What regulations apply?

The following regulations apply to the Business and Education Standards Program:

(a) The regulations in this Part 421.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2416)

§421.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2416)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§421.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperation agreement on the basis of the criteria in §421.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §421.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §421.21.

(Authority: 20 U.S.C. 2416)

§421.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in those divisions or specialty areas;

(iv) Minimum tools and equipment required in those divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas; and

(vi) Minimum qualifications for instructional staff in those divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this section as a part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national standards for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and ending dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the business-labor-education technical committees will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate the business-labor-education technical committees effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with education and industrial trade associations, labor organizations, and businesses;

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) The experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available;

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades; and

(4) Provisions for encouraging the adoption and use of the proposed standards by education and training programs.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2416)

Subpart D—What Conditions Must Be Met After an Award?

§421.30 What is the cost-sharing requirement?

(a) The Secretary pays no more than 50 percent of the cost of a project.

(b) Each recipient of an award under this part shall provide at least 50 percent of the cost of the business-labor-education technical committees established under the award.

(Authority: 20 U.S.C. 2416(c))

24. A new Part 422 is added to read as follows:

PART 422—EDUCATIONAL PROGRAM FOR FEDERAL CORRECTIONAL INSTITUTIONS

Subpart A—General

Sec.

422.1 What is the Educational Program for Federal Correctional Institutions?
422.2 Who is eligible for an award?
422.3 What activities may the Secretary fund?
422.4 What regulations apply?
422.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

422.20 How does the Secretary evaluate an application?
422.21 What selection criteria does the Secretary use?
422.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

422.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2417, unless otherwise noted.

Subpart A—General

§422.1 What is the Educational Program for Federal Correctional Institutions?

The Educational Program for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions.

(Authority: 20 U.S.C. 2417(a))

§422.2 Who is eligible for an award?

(a) Awards are provided to consortia of—

(1) A Federal correctional institution; and

(2) An educational institution, a community-based organization of demonstrated effectiveness, a business, or an industry.

(b) A consortium must include a Federal correctional institution and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) Members of a consortium shall apply jointly to the Secretary for funds.

(2) The members of a consortium shall enter into an agreement, in the form of a single document signed by all members, designating the Federal correctional institution as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2417(a))

§422.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements that may be used for—

(a) Basic education programs with an emphasis on literacy instruction;

(b) Vocational training programs;

(c) Guidance and counseling programs; and

(d) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after the offenders are released from correctional institutions.

(Authority: 20 U.S.C. 2417(b))

§422.4 What regulations apply?

The following regulations apply to the Educational Program for Federal Correctional Institutions:

(a)The regulations in this Part 422.

(b)The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2417)

§422.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2417)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§422.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §422.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §422.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criteria.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §422.21.

(Authority: 20 U.S.C. 2417)

§422.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (20 points) The Secretary reviews each application to assess the need for and the soundness of the rationale for the project, including—

(1) A clear description of the need for the proposed project;

(2) Specific evidence of the need for the project;

(3) A description of any ongoing and planned activities in the Federal correctional institution relative to the need; and

(4) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals, including measurable goals for learner enrollment and completion in each academic skill and occupation for which training is to be provided;

(2) Definitions of successful program completion (or a description of how successful program completion will be defined and reported to the Secretary) for each academic skill and occupation for which training is to be provided. Successful program completion must be defined in terms of the academic and vocational competencies expected of enrollees prior to successful completion, and any academic or work credentials expected to be acquired upon completion;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes a description of the respective roles of each member of the consortium in carrying out the plan;

(4) The extent to which the objectives are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and pre- and post-release services for participants;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(6) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used in the project;

(iii)The appropriateness of the time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are necessary and reasonable in relation to the objectives of the project and the numbers of participants to be served; and

(3) The budget narrative justifies the proposed expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment and completion of participants by sex, racial or ethnic group and, if appropriate, by level of English proficiency, for each academic skill and occupation for which training is provided;

(2) The plan identifies at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2417)

§422.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in §422.21, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2301; 2417)

Subpart D—What Conditions Must be Met After an Award?

§422.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment and completion by sex, racial or ethnic group, and, if appropriate, by level of English proficiency for each academic skill and occupation for which training has been provided.

(d) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job enhancement, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic skills competencies.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2417)

25. A new Part 423 is added to read as follows:

PART 423—VOCATIONAL EDUCATION DROPOUT PREVENTION PROGRAM

Subpart A—General

Sec.

423.1 What is the Vocational Education Dropout Prevention Program?
423.2 Who is eligible for an award?
423.3 What activities may the Secretary fund?
423.4 What regulations apply?
423.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

423.20 How does the Secretary evaluate an application?
423.21 What selection criteria does the Secretary use?
423.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

423.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2418, unless otherwise noted.

Subpart A—General

§423.1 What is the Vocational Education Dropout Prevention Program?

The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school.

(Authority: 20 U.S.C. 2418)

§423.2 Who is eligible for an award?

(a) Awards are provided to partnerships between—

(1) Local educational agencies or area vocational education schools; and

(2) Institutions of higher education or public or private nonprofit organizations that have an established record of vocational education strategies that prevent students from dropping out of school.

(b) Partnerships formed for the purpose of receiving an award under this program must include as partners at least one of the types of entities in paragraph (a)(1) of this section and one of the types of entities in paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2418(a))

§423.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate a vocational education program designed to prevent students from dropping out of secondary school.

(b) Projects assisted under this part must—

(1) Serve special populations, including significant numbers of economically disadvantaged, dropout-prone youth;

(2) Provide inservice training for teachers and administrators in dropout prevention; and

(3) Disseminate information relating to successful dropout prevention strategies and programs through appropriate dissemination networks such as the National Dropout Prevention Network, the National Dropout Prevention Center, and the Center on Adult, Career and Vocational Education of the Educational Resources Information

Clearinghouse.

(Authority: 20 U.S.C. 2418)

§423.4 What regulations apply?

The following regulations apply to the Vocational Education Dropout Prevention Program:

(a) The regulations in this Part 423.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2418)

§423.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2418)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§423.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §423.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §423.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §423.21.

(e) In addition to the 100 points to be awarded based on the criteria in §423.21, the Secretary awards up to 10 points to applications that propose particularly effective activities that—

(1) Provide the special support services necessary to help individual students successfully complete the vocational education program such as mentoring, basic skills education, and services that address barriers to learning; and

(2) Use measures to integrate basic and academic skills instruction with work experience and vocational education.

(Authority: 20 U.S.C. 2418)

§423.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program design.* (15 points) The Secretary reviews each application to assess the effectiveness of the project including the quality of the—

(1) Vocational program dropout prevention model to be used in carrying out the purposes of this program, including services to be provided, who will provide them, and how they will be provided;

(2) Proposed methodology, specifically, the extent to which the project will include—

(i) Training in appropriate vocational skill areas;

(ii) A thorough assessment of individual student needs;

(iii) Flexibility in the structure of the delivery system to be used (e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios);

(iv) Active recruitment;

(v) Thorough assessment and feedback on student progress;

(vi) Individualized treatment;

(vii) Tutoring and mentoring;

(viii) Adjustments for child care;

(ix) Coordination of vocational instruction, academic instruction, and counseling services;

(x) Coordination with other agencies providing services to dropouts or potential dropouts;

(xi) Relevant work-related experience;

(xii) Transportation from school to work;

(xiii) Parental involvement;

(xiv) Community and business involvement; or

(xv) Inservice training for teachers and administrators in dropout prevention.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed dropout prevention program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs including military service; and

(iv) Successful matriculation of students to a variety of postsecondary educational programs.

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Proposes a project that will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Management plan.* (15 points) The Secretary reviews each application to assess the quality of the management plan for the project that includes the following elements:

(1) A clear chain of command, including how staff will be managed and how coordination among staff will be accomplished.

(2) Timelines for each activity.

(3) A clear description of the goals, objectives, and activities, and how each builds on the others.

(4) An effective strategy for the use of the resources and personnel from the grant to achieve each objective.

(5) A detailed description of how subcontracts will be awarded, monitored, and evaluated, if subcontracts are to be used.

(d) *Key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications (as described in a job description or a resume), in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine—

(1) The quality and comprehensiveness of the independent evaluation plan for the project, including the extent to which the plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations;

(2) The extent to which the plan—

(i) Is clearly explained and is appropriate to the project;

(ii) To the extent possible, is objective and will produce data that are quantifiable;

(iii) Identifies expected outcomes of the participants and how those outcomes will be measured;

(iv) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(v) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(3) The qualifications (as described in a

job description or a resume) of the independent evaluator to be used in the project.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative explains and justifies each budget item in detail;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Demonstration and dissemination plan.* (10 points) The Secretary reviews each application to assess the quality of the plan for demonstrating and disseminating information about the project, including the—

(1) Quality of the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Target groups, timelines, and responsibilities for each dissemination activity, including provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) Description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available;

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(6) Description of the cost and logistical provisions to be made if there is an intent to engage in a subcontract with one or more of the national dissemination entities described in §423.3(b)(3) for dissemination services.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2418)

§423.22 What additional factors may the Secretary consider?

After evaluating applications according to the criteria in §423.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2418)

Subpart D—What Conditions Must Be Met After an Award?

§423.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2418)

26. A new Part 424 is added to read as follows:

PART 424—MODEL CENTERS OF REGIONAL TRAINING FOR SKILLED TRADES PROGRAM

Subpart A—General

Sec.

424.1 What is the Model Centers of Regional Training for Skilled Trades Program?
424.2 Who is eligible for an award?
424.3 What activities may the Secretary fund?
424.4 What regulations apply?
424.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

424.20 How does the Secretary evaluate an application?
424.21 What selection criteria does the Secretary use?
424.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

424.30 What are the evaluation requirements?
424.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2419, unless otherwise noted.

Subpart A—General

§424.1 What is the Model Centers of Regional Training for Skilled Trades Program?

The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide—

(a) Training for skilled tradesmen within a region serving several States; and

(b) Technical assistance for programs that train skilled tradesmen within a region serving several States.

(Authority: 20 U.S.C. 2419)

§424.2 Who is eligible for an award?

Entities proposing to develop a regional model center or existing regional model centers that provide training for skilled tradesmen within a region serving several States and technical assistance for programs that train skilled tradesmen within a region serving several States are eligible for awards under this program.

(Authority: 20 U.S.C. 2419(a))

§424.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to model centers for regional training for skilled trades. Each project assisted by the Secretary must—

(a) Provide training and career counseling for skilled tradesmen in areas of skill shortages or projected skill shortages;

(b) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(c) Upgrade specialized craft training; and

(d) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities, and ex-criminal offenders to trade occupations and training.

(Authority: 20 U.S.C. 2419(b))

§424.4 What regulations apply?

The following regulations apply to the Model Centers of Regional Training for Skilled Trades Program:

(a) The regulations in this Part 424.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2419)

§424.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) As used in this part, the term *skilled trades* includes, among other occupations, *construction trades* and *firefighting*, which are defined as follows:

Construction trades means a summary of groups of instructional programs that prepare individuals to erect, install, maintain, and repair buildings, highways, airports, missile sites, and other structures using materials such as metal, wood, stone, brick, glass, concrete, and composition substances. The term includes instruction in cost estimating; cutting, fastening, and fitting various materials; the use of hand and power tools; and in following technical specifications and blueprints.

Firefighting means an instructional

program that prepares individuals to fight fires, and control the outbreak of fires. The term includes instruction in fire department organization; the use of water and other materials in firefighting and various kinds of equipment such as extinguishers, pumps, hoses, ropes, ladders, gas masks, hydrants, and standpipe and sprinkler systems; entry and rescue and salvage practices and equipment; and fire and arson inspection and investigation techniques.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§424.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §424.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §424.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §424.21.

(e) In addition to points awarded under §424.21, the Secretary may award up to five points to applications that propose particularly effective training in the masonry trades.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

§424.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed model center of regional training for skilled trades and how well the project will—

(1) Provide training and career counseling for skilled tradesmen in areas of labor or skill shortages or projected labor or skill shortages;

(2) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(3) Upgrade specialized craft training; and

(4) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities and ex-criminal offenders to trade occupations and training.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed national model center of regional training for skilled trades on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) Placement of students in jobs, including military service; and

(iii) Successful matriculation of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of training for skilled tradesmen;

(3) Proposes to use innovative techniques that address problems and needs associated with training skilled tradesmen and that are of national significance; and

(4) Is likely to make a significant contribution to training skilled tradesmen in areas of skill shortages or projected skill shortages in the region in which the project will be located.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the skilled trades training methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project;

and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire regional model center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate: and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2419)

§424.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in §424.21, the Secretary considers whether the most highly rated applications are equitably distributed among the skilled trades with shortages.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under this program among the skilled trades with shortages.

(Authority: 20 U.S.C. 2419(c))

Subpart D—What Conditions Must Be Met After an Award?

§424.30 What are the evaluation requirements?

(a) Each grant recipient shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2419)

§424.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the *Federal Register* the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2419)

27. Part 425 is added to read as follows:

PART 425—DEMONSTRATION PROJECTS FOR THE INTEGRATION OF VOCATIONAL AND ACADEMIC LEARNING PROGRAM

Subpart A—General

Sec.

425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?
425.2 Who is eligible for an award?
425.3 What activities may the Secretary fund?
425.4 What regulations apply?
425.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

425.20 How does the Secretary evaluate an application?
425.21 What selection criteria does the Secretary use?
425.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

425.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2420, unless otherwise noted.

Subpart A—General

§425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?

The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning.

(Authority: 20 U.S.C. 2420(a))

§425.2 Who is eligible for an award?

(a) The following entities are eligible for an award under the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(1) An institution of higher education.

(2) An area vocational education school.

(3) A secondary school funded by the Bureau of Indian Affairs.

(4) A State board of vocational education.

(5) A public or private nonprofit organization.

(6) A local educational agency.

(b) Consortia composed of the entities described in paragraph (a) of this section also are eligible for awards under this program.

(Authority: 20 U.S.C. 2420(a))

§425.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers of vocational education students and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) under section 1562 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2962), or, in the case of projects that will be funded for less than three years, disseminating information about the design of a project necessary for effective integrative strategies to be supported, so that they may be disseminated through the NDN.

(b) Each project supported under this part must serve—

(1) Individuals who are members of special populations;

(2) Vocational students in secondary schools;

(3) Vocational students at postsecondary institutions;

(4) Individuals enrolled in adult

programs; or

(5) Single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2420(a), (b)(3) and (4))

§425.4 What regulations apply?

The following regulations apply to the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(a) The regulations in this Part 425.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2420)

§425.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§425.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §425.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §425.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §425.21.

(Authority: 20 U.S.C. 2420)

§425.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning; and

(2) The quality of the services that the project will provide to—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at postsecondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements in §425.30;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curricular developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(8) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420)

§425.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in §425.21, the Secretary determines whether the most highly rated applications—

(1) Are equitably distributed throughout the Nation;

(2) Offer significantly different approaches to integrating vocational and academic curricula; and

(3) Serve individuals described in §425.3(b).

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of, diversity of approaches in, or the diversity of populations to be served by projects funded under this program.

(Authority: 20 U.S.C. 2420(b))

Subpart D—What Conditions Must Be Met After an Award?

§425.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) Each grantee shall employ adequate measures to evaluate the effectiveness of the curriculum approaches supported by the project.

(d) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(e) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(f) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420(b)(5))

28. Part 426 is added to read as follows:

PART 426—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.

426.1 What is the Cooperative Demonstration Program?
426.2 Who is eligible for an award?
426.3 What activities may the Secretary fund?
426.4 What activities does the Secretary fund under the Demonstration Projects?
426.5 What activities does the Secretary fund under the Programs for Model Consumer and Homemaking Education Projects?
426.6 What activities does the Secretary fund under the Community-Based Organization Projects?
426.7 What activities does the Secretary fund under the Agriculture Action Centers?
426.8 What regulations apply?
426.9 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

426.20 How does the Secretary evaluate an application?
426.21 What selection criteria does the Secretary use for the Demonstration Projects?
426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?
426.23 What selection criteria does the Secretary use for the Community-Based Organization Projects?
426.24 What selection criteria does the Secretary use for Agriculture Action Centers?
426.25 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

426.30 What is the requirement regarding cost-sharing?
426.31 What is the requirement regarding dissemination?
426.32 What are the evaluation requirements?
426.33 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2420a, unless otherwise noted.

Subpart A—General

§426.1 What is the Cooperative Demonstration Program?

The Cooperative Demonstration Program provides financial assistance for—

(a) Model projects providing improved access to quality vocational education programs for individuals who are members of special populations and for men and women seeking non-traditional occupations;

(b) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(c) Projects to overcome national skill shortages;

(d) Projects that develop consumer and homemaking education programs, including child growth and development centers;

(e) Projects that assist disadvantaged youths in preparing for technical and professional health careers; and

(f) Model projects providing access to vocational education programs through agriculture action centers.

(Authority: 20 U.S.C. 2420a(a))

§426.2 Who is eligible for an award?

(a) The following entities are eligible to apply for an award for activities described in §§426.4, 426.5, and 426.7:

(1) State educational agencies.

(2) Local educational agencies.

(3) Postsecondary educational institutions.

(4) Institutions of higher education.

(5) Other public and private agencies, organizations, and institutions.

(b)(1) Awards for activities described in §426.6 are provided to partnerships between—

(i) Community-based organizations; and

(ii) Local schools, institutions of higher education, and businesses.

(2) A partnership formed for the purpose of receiving an award under §426.6 shall include as partners at least one community-based organization and at least one entity from the groups listed in

paragraph (b)(1)(ii) of this section, and may include more than one entity from each group.

(3) The partners shall apply jointly to the Secretary for an award under this part.

(4) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420a(a))

§426.3 What activities may the Secretary fund?

(a) The Secretary supports, directly or through grants, cooperative agreements, or contracts, the following types of projects:

(1) *Demonstration Projects.* The Secretary supports model projects providing improved access to high quality vocational education for members of special populations and men and women seeking to enter non-traditional occupations, projects that are models of successful cooperation between the private sector and public agencies in vocational education, and projects to overcome national skill shortages, as described in §426.4.

(2) *Program for Model Consumer and Homemaking Education Projects.* The Secretary supports model projects that improve instruction and curricula related to consumer and homemaking skills, as described in §426.5.

(3) *Community-Based Organization Projects.* The Secretary supports community-based organizations in partnerships with entities listed in §426.2(b)(1)(ii), to operate projects that assist disadvantaged youths in preparing for technical and professional health careers, as described in §426.6.

(4) *Agriculture Action Centers.* The Secretary supports model projects providing improved access to vocational education programs through agriculture action centers, as described in §426.7.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Authority: 20 U.S.C. 2420a(a))

§426.4 What activities does the Secretary fund under the Demonstration Projects?

The Secretary supports the following types of projects: (a) Model projects providing improved access to quality vocational education programs for—

(1) Individuals with disabilities;

(2) Educationally and economically disadvantaged individuals (including foster children);

(3) Individuals of limited English proficiency;

(4) Individuals who participate in programs designed to eliminate sex bias;

(5) Individuals in correctional institutions; and

(6) Men and women seeking to enter nontraditional occupations.

(b)(1) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education, (including State boards of vocational education and eligible recipients as defined in 34 CFR 400.4).

(2) The projects described in paragraph (b)(1) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(i) Work experience and apprenticeship projects;

(ii) Transitional work site job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(iii) Placement services in occupations that the students are preparing to enter;

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(v) Employment-based learning programs.

(3) The projects described in paragraphs (b)(1) and (2) of this section may include institutional and on-the-job training, supportive services authorized by the Act, and other assistance as the Secretary determines to be necessary for the successful completion of the project.

(c) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(Authority: 20 U.S.C. 2420a(a)(1)-(3) and (b)(1))

§426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?

The Secretary supports model projects that develop programs and improve instruction and curricula related to—

(a) Managing individual and family resources;

(b) Making consumer choices;

(c) Balancing work and family;

(d) Improving responses to individual and family crises, including family violence and child abuse;

(e) Strengthening parenting skills, especially among teenage parents;

(f) Preventing teenage pregnancy;

(g) Assisting aged individuals with disabilities, and members of at-risk populations, including the homeless;

(h) Conserving limited resources;

(i) Improving individual, child, and family nutrition and wellness;

(j) Understanding the impact of new technology on life and work;

(k) Applying consumer and homemaking education skills to jobs and careers;

(l) Other needs to be determined by the State board of vocational education; and

(m) Developing child growth and development centers.

(Authority: 20 U.S.C. 2420a(4))

§426.6 What activities does the Secretary fund under the Community-Based Organization Projects?

(a) The Secretary supports projects that assist disadvantaged youths in preparing for technical and professional health careers.

(b) The Secretary may require partnerships described in §426.2(b)(1) to provide in-kind contributions from participating schools, institutions, and businesses and to involve health professionals serving as instructors and counselors.

(Authority: 20 U.S.C. 2420a(5))

§426.7 What activities does the Secretary fund under the Agriculture Action Centers?

The Secretary supports model Agriculture Action Centers that provide improved access to vocational education programs and that—

(a) Assist individuals—

(1) Who are adversely affected by farm and rural economic downturns;

(2) Who are dislocated from farming; and

(3) Who are dislocated from agriculturally related businesses and industries that are adversely affected by farm and rural economic downturns;

(b) Provide services, including—

(1) Crisis management counseling and outreach counseling that would include members of the family of the affected individual;

(2) Evaluation of vocational skills and counseling on enhancement of these skills;

(3) Assistance in obtaining training in basic, remedial, and literacy skills;

(4) Assistance in seeking employment and training in employment-seeking skills; and

(5) Assistance in obtaining training

related to operating a business or enterprise;

(c) Provide for formal and on-the-job training to the extent practicable; and

(d) Are coordinated with activities and discretionary programs under Title III of the Job Training Partnership Act (29 U.S.C. 1651 *et seq.*).

(Authority: 20 U.S.C. 2420a(6))

§426.8 What regulations apply?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in this Part 426.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2420a)

§426.9 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420a)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§426.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §426.21, 426.22, 426.23, or 426.24.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §426.21, 426.22, 426.23, or 426.24.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §426.21, 426.22 426.23, or 426.24.

(Authority: 20 U.S.C. 2420a)

§426.21 What selection criteria does the Secretary use for the Demonstration Projects?

The Secretary uses the following criteria to evaluate an application for a demonstration project:

(a) *Program factors.* (10 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the project will provide—

(1) Vocational education to meet current and projected occupational needs; and

(2) For adequate and appropriate involvement and cooperation of the public and private sectors in the project, including—

(i) A clear identification of the public and private sector entities involved in the project;

(ii) A description of public and private sector involvement in the planning of the project; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Disseminating the results of the project in a manner that would meet the requirement in §426.31;

(3) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(4) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(5) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(6) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project. For the Community-Based Organization Projects, the Secretary determines the qualifications, in relation to project requirements, of health professionals serving as preceptors and counselors and of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project. For the Program for Model Consumer and Homemaking Education Projects, the Secretary also considers the experience and training of key personnel in consumer and homemaking education; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities. For the Community-Based Organization Projects, the Secretary also determines the extent to which the budget includes in-kind contributions from partnership members.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420a)

§426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?

(a) The Secretary uses the following criteria to evaluate an application for a model consumer and homemaking education project:

(1) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which project activities will improve, expand, and update programs that will—

(i) Be conducted for residents of economically depressed areas or areas with high rates of unemployment;

(ii) Encourage participation of traditionally underserved populations;

(iii) Encourage the elimination of sex bias and sex stereotyping; and

(iv) Address priorities and emerging concerns at the local, State, and national levels, such as the articulation of secondary and postsecondary consumer and homemaking education programs and the integration of basic skills in consumer and homemaking education programs.

(2) *Demonstration program design.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(i) Bases the proposed consumer and homemaking education project on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(A) Student performance and achievement;

(B) Placement of students in jobs, including the preparation of students for the occupation of homemaking; and

(C) Successful transfer of students to a wide variety of postsecondary educational programs;

(ii) Proposes project objectives that contribute to the improvement of consumer and homemaking education; and

(iii) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(b) The Secretary also uses the criteria and points in §426.21(c) through (h) to evaluate an application.

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(Authority: 20 U.S.C. 2420a)

§426.23 What selection criteria does the Secretary use for the Community-Based Organization Projects?

The Secretary uses the following criteria to evaluate an application for a community-based organization project:

(a) *Program factors.* (10 points) The Secretary reviews the quality of a proposed community-based organization project to assess the extent to which the proposed project—

(1) Will assist disadvantaged youths in preparing for technical and professional health careers;

(2) Provides for adequate and appropriate involvement of local schools, institutions of higher education, and businesses in the project, including—

(i) Clear identification of partnership members;

(ii) Involvement of partnership members in the planning of the project;

(iii) Involvement of partnership members in the operation of the project; and

(3) Will coordinate activities to ensure that the project will help meet current and projected occupational needs in the area.

(b) *Other criteria.* The Secretary also uses the criteria and points in §426.21(b) through (h) to evaluate an application.

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(Authority: 20 U.S.C. 2420a)

§426.24 What selection criteria does the Secretary use for Agriculture Action Centers?

The Secretary uses the following criteria to evaluate an application for an Agriculture Action Center:

(a) *Program factors.* (10 points) The Secretary reviews each application for an Agriculture Action Center to determine the extent to which the proposed center will—

(1) Provide vocational education to meet current and projected occupational needs; and

(2) Be located in a service area that includes a high concentration of individuals who are—

(i) Adversely affected by farm and rural economic downturns;

(ii) Dislocated from farming; and

(iii) Dislocated from agriculturally-related businesses and industries that are adversely affected by farm and rural economic downturns.

(b) *Other criteria.* The Secretary also uses the criteria and points in §426.21(b) through (h) to evaluate an application.

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(Authority: 20 U.S.C. 2420a)

§426.25 What additional factors may the Secretary consider?

After evaluating applications according to criteria in §§426.21, 426.22, 426.23, or 426.24, the Secretary may fund other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this part.

(Authority: 20 U.S.C. 2420a)

Subpart D—What Conditions Must Be Met After an Award?

§426.30 What is the requirement regarding cost-sharing?

(a) A recipient of an award under this part shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with Subpart G of 34 CFR Part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

§426.31 What is the requirement regarding dissemination?

Recipients must disseminate the results of projects assisted under this part in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

§426.32 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420a)

§426.33 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the *Federal Register* the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2420a)

29. Part 427 is added to read as follows:

Part 427— BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.

427.1 What is the Bilingual Vocational Training Program?
427.2 Who is eligible for an award?
427.3 What activities may the Secretary fund?
427.4 What regulations apply?
427.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

427.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

427.20 How does the Secretary evaluate an application?
427.21 What selection criteria does the Secretary use?
427.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

427.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2441(a), unless otherwise noted.

Subpart A—General

§427.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school youth and adults, to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Authority: 20 U.S.C. 2441(a))

§427.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve or currently serving individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(a))

§427.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts for—

(1) Bilingual vocational training projects for limited English proficient out-of-school youth and adults who are available for training and employment;

(2) Bilingual vocational education and training projects for limited English proficient out-of-school youth and adults who have already entered the labor market but who desire or need English language skills and job skills training or retraining to achieve employment in a recognized occupation or new and emerging occupations, adjust to changing work force needs, expand their range of skills, or advance in employment; and

(3) Training stipends for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 2441(a), (c)(2))

§427.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this Part 427.

(Authority: 20 U.S.C. 2441(a))

§427.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(a))

Subpart B—How Does One Apply for an Award?

§427.10 What must an application contain?

(a) An application must—

(1) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Training Program;

(3) Contain measurable goals for the enrollment, completion, and placement of program participants;

(4) Include a comparison of how the applicant's goals take into consideration any related standards and measures in the geographic area for the Job Opportunities and Basic Skills Training (JOBS) program (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) programs (29 U.S.C. 1501 *et seq.*) and any standards set by the State Board for Vocational Education for the occupational and geographic area;

(5) Describe, for each occupation for which training is to be provided, how successful program completion will be determined and reported to the Secretary in terms of the academic and vocational competencies to be demonstrated by enrollees prior to successful completion and any academic or work credentials expected to be acquired upon completion; and

(6) Be submitted to the State board for vocational education (State board) established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(6) of this section with the application.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(a), (d)(1) and (2))

Subpart C—How Does the Secretary Make an Award?

§427.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in §427.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §427.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in §427.21.

(Authority: 20 U.S.C. 2441(a))

§427.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Need.* (15 points) The Secretary reviews each application for specific information that shows the need for the proposed bilingual vocational training project in the local geographic area, including—

(1) The employment training need of limited English proficient individuals to be met;

(2) The labor market need to be met; and

(3) The relationship of the proposed project to other employment training programs in the community.

(b) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the project proposes measurable goals for student enrollment, completion, and placement and describes how the applicant sets the goals taking into consideration the standards and measures for JOBS programs and JTPA programs and any standards set by the State Board established under section 111 of the Act for the occupation and geographic area.

(2) The Secretary reviews each application to determine the extent to which the project defines successful program completion (or describes how successful program completion will be defined and reported to the Secretary) in a way consistent with the goals of the program for each occupation for which training is to be provided.

(3)(i) The Secretary reviews each application for specific information that, upon completion of their training, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be enrolled for further training related to their training under this program. This information must correspond to the information described in paragraph (a) of this section.

(ii) The estimated job placement rate must be supported by past records, actual employer job commitments, anticipated job openings, or other pertinent information.

(4) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(i) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Training Program;

(ii) For each objective, the specific tasks to be performed in order to achieve the specified project objective;

(iii) How the applicant plans to use its resources and personnel to achieve each objective; and

(iv) If the applicant plans to use a project advisory committee, a clear plan for using a project advisory committee to assist in project development, to review curriculum materials, and to make recommendations about job placements.

(c) *Program factors.* (20 points)

(1) The Secretary reviews each application to determine the quality of training to be provided, including—

(i) Provision of vocational skills instruction in English and the trainees' native languages;

(ii) Provision of job-related English-as-a-second language instruction;

(iii) Coordination of the job-related English-as-a-second language instruction with the vocational skills instruction;

(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school youth and adults who have the greatest need for bilingual vocational training;

(v) Assessment procedures that evaluate the language and vocational training needs of the trainees;

(vi) Provision of counseling activities and employability skills instruction that prepare trainees for employment in an English language environment; and

(vii) Job development and job placement procedures that provide opportunities for career advancement or entrepreneurship.

(2) The Secretary reviews each application to determine the project's potential to have a lasting impact in the local geographic area, including the potential impact of the project on—

(i) Program participants;

(ii) The agency or agencies responsible for administering the bilingual vocational training program;

(iii) Other employment training services in the local area; and

(iv) The community.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities, equipment, and supplies that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the project;

(2) Identifies at a minimum, types of data to be collected and reported with respect to the English-language competencies and academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the training;

(3) Identifies at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of

participants by sex, racial or ethnic group, socio-economic status, and if appropriate, by level of English proficiency, for each occupation for which training is provided;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results; and

(5) Makes use of an external evaluator.

(g) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for making available the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

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(Authority: 20 U.S.C. 2441(a))

§427.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in §427.21 and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within a State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Subpart D—What Conditions Must be Met After an Award?

§427.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an independent evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include descriptions and analyses of the accuracy of records and validity of measures by the project to establish and report on the English-language competencies and academic and vocational competencies demonstrated and the academic and work credentials acquired.

(d) The annual evaluation must contain descriptions and analyses of the accuracy of records and validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex, racial or ethnic group, socio-economic status, and, if appropriate, by level of English proficiency for each occupation for which training has been provided.

(e) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services; and

(ii) Improved English-language, academic, and vocational skills competencies.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(a))

30. Part 428 is added to read as follows:

PART 428—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.
428.1 What is the Bilingual Vocational Instructor Training Program?
428.2 Who is eligible for an award?
428.3 What activities may the Secretary fund?
428.4 What regulations apply?
428.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

428.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

428.20 How does the Secretary evaluate an application?
428.21 What selection criteria does the Secretary use?
428.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 2441(b), unless otherwise noted.

Subpart A—General

§428.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient individuals.

(Authority: 20 U.S.C. 2441(b))

§428.2 Who is eligible for an award?

(a) The following entities are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(b)(1))

§428.3 What activities may the Secretary fund?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating in or preparing to participate in bilingual vocational training programs; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project.

(Authority: 20 U.S.C. 2441(b))

§428.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this Part 428.

(Authority: 20 U.S.C. 2441(b))

§428.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(b))

Subpart B—How Does one Apply for an Award?

§428.10 What must an application contain?

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to make the determination required by §428.3(b); and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient individuals.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority : 20 U.S.C. 2441(d)(1), (4))

Subpart C—How Does the Secretary Make an Award?

§428.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in §428.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) or this section, based on the criteria in §428.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, in a notice published in the *Federal Register*, the Secretary may assign the reserved 15 points among the criteria in §428.21.

(Authority: 20 U.S.C. 2441(b), (d)(5))

§428.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area or areas to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area or areas to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient individuals.

(b) *Program design.* (20 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area or areas to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient individuals enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient individuals for employment; and

(2) Potential to increase access to vocational education for limited English proficient individuals.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project;

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after-training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured; and

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for

evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(b))

§428.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in §428.21, and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Department of Education Analysis of Comments and Changes

Note:
The following sections
will not be codified in the
Code of Federal Regulations.

APPENDIX A

Analysis of Comments and Changes

PART 400 — VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS — GENERAL PROVISIONS

Definitions — Criminal offender (§400.4(b))

Comments: One commenter recommended that the phrase "who is charged with" be removed from the definition of "criminal offender."

Discussion: The Secretary agrees that a person who is charged with a criminal offense is not a criminal offender as that term is commonly used. However, the Secretary believes Congress included these persons under the definition of "criminal offender" so that individuals incarcerated prior to trial could receive services under the Act.

Changes: None.

Definitions — Coherent sequence of courses (§400.4(b))

Comments: Some commenters suggested that the regulations should not permit a single adult course to qualify as a sequence of courses. The commenters argued that the definition of "coherent sequence of courses" is incorrect and clearly misinterprets the statute. The commenters recommended that both a coherent series of courses and a sequential course of study — but not a single course — be interpreted as a "series of courses." A number of other commenters supported the position that a single course incorporating a sequence or aggregation of competencies should be eligible for funding. These commenters urged that, for the sake of clarity, the definition of "coherent sequence of courses" be revised to include a single course, rather than providing this information in the preamble.

Discussion: In defining the term "coherent sequence of courses," the Secretary was guided by the statutory definition of "vocational education," which includes competency-based applied learning. Frequently, vocational offerings designed to prepare students for employment are not structured on the basis of a sequence of courses but rather on the aggregation of competencies necessary to perform a job. In the case of adult training and retraining programs, these competencies are invariably structured as sequential units within a single course. Although the statutory definition of "vocational education" is ambiguous, the Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act — including competency-based adult training and retraining courses. The definition of "coherent sequence of courses" in §400.4(b) incorporates a single adult training or retraining course structure if that course leads to an aggregation of competencies necessary for employment.

Changes: The definition of "coherent sequence of courses" in §400.4(b) has been revised to include sequential units encompassed within a single adult training or retraining course that otherwise meets the requirements of this definition.

Comments: One commenter requested that the definition of "coherent sequence of courses" be changed to include "basic and advanced academic competencies" and "specific and general occupational competencies." The commenter pointed out that Congress intended that programs focus on the broad range of both basic and advanced academic skills and on both general and specific occupational skills.

Discussion: The Secretary agrees that Congress intended that programs funded under the Act focus on the broad range of both basic and advanced academic skills and on both general and specific occupational skills. The Secretary believes that the definition of "coherent sequence of courses" contained in §400.4(b) contemplates a broad interpretation of academic and occupational skills.

Changes: None.

Definitions — Disadvantaged (§400.4(b))

Comments: One commenter suggested that the regulations should clarify that an individual with disabilities may also be economically or academically disadvantaged and may need other services to meet the needs related to their disadvantages.

Discussion: The Secretary agrees that an individual with disabilities may also be economically or academically disadvantaged and, as such, may require and should receive additional services. However, the Secretary notes that the definition of "disadvantaged" is consistent with the unambiguous definition of "disadvantaged" in section 521(b) of the Act, that excludes individuals with disabilities in order to avoid duplicate counts of students.

Changes: None.

Comments: One commenter objected to the definition of "disadvantaged" as it applies to an academically disadvantaged individual as being too restrictive. The commenter felt that the "25th percentile" rule should be changed to the "40th percentile" so as to agree with the practice under Chapter 1.

Discussion: The definition of "disadvantaged" is similar to the definition of this term in the regulations that implemented the Carl D. Perkins Vocational Education Act (CDPVEA). This definition was based on the intent of Congress as expressed in Item 246 of the Conference Report accompanying the CDPVEA. (H.R. Rep. 1129, 98th Cong., 2d Sess. 100 (1984).)

Changes: None.

Definitions — Displaced homemaker (§400.4(b))

Comments: One commenter suggested waiving or expanding the requirement to be an adult to qualify as a "displaced homemaker." The commenter expressed concern that the definition is discriminatory if only adults qualified as displaced homemakers. Additionally, the commenter suggested that paragraph (3)(i) of the definition clarify that individuals "currently on public assistance" are included under the definition.

Discussion: The definition in section 521(14) of the Act imposes an unambiguous requirement that only an adult may qualify as a displaced homemaker. However, neither the Act nor the regulations define "adult." Therefore, the issue of whether an individual is an adult is controlled by State law.

With respect to whether individuals who are currently on public assistance would be displaced homemakers, section 521(b) of the Act does not include this group of individuals as a separate category within the definition of "displaced homemakers." However, these individuals may be included in other categories within the definition, such as individuals who are unemployed or underemployed in paragraph (3)(iii) of the definition of "displaced homemaker."

Changes: None.

Comments: One commenter expressed concern that the definition of "displaced homemaker" is overly restrictive, specifically with respect to the language regarding parents who may currently receive aid to families with dependent children. The commenter recommended that parents who have worked primarily in the home for a number of years and are currently receiving public assistance be included in the definition.

Discussion: Section 521(14)(B)(ii) of the Act establishes a condition that a parent may be considered a "displaced homemaker" if his or her youngest dependent child becomes ineligible to receive assistance under the program for aid to families with dependent children under Part A of Title IV of the Social Security Act within two years of the parent's application for assistance under the Perkins Act. However, the Secretary notes that an individual who may not qualify as a displaced homemaker under this provision may well qualify as a displaced homemaker under other provisions of the definition such as those related to employment status or past dependence on public assistance or the income of a relative. Additionally, this individual may be within the definition of a "single parent," and, thus, may qualify for the same services as a displaced homemaker under §§403.80-403.82.

Changes: None.

Definitions — Economically disadvantaged family or individual (§400.4(b))

Comments: A commenter noted that §400.4(b) defines "economically disadvantaged family or individual" to include a family or an individual eligible for the free or reduced-price meals programs under the National School Lunch Act. Further, the commenter noted that the National School Lunch Act prohibits the identification of students by name, and, because of the many restrictions under the Privacy Act, it is extremely difficult for an LEA to identify and verify the number of economically disadvantaged individuals enrolled in its vocational education program. The commenter recommended that the Department further clarify how to identify and verify data on economically disadvantaged enrollment in a vocational education program without legal access to this information.

Discussion: The note to paragraph (1)(iv) of the definition of "economically disadvantaged family or individual" explains that the National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in the free or reduced-priced meals program to determine eligibility of sites or program areas for projects, services, and activities under the Act.

Changes: None.

Comments: Several commenters noted that the definition of "economically disadvantaged family or individual" does not include two criteria — receipt of a Pell grant or aid under a comparable State program of need-based financial assistance and eligibility for participation in programs assisted under Title II of JTPA — that were included under the regulations implementing the CDPVEA. The commenters recommended that these two criteria be retained in order to allow continued services under section 231 of the Act to the individuals who were served under the predecessor statute.

Discussion: Rather than presenting an exhaustive list of possible indicators of a person's status as economically disadvantaged, the Secretary believes it is more appropriate to list some indicators of economic status while providing grantees the flexibility to identify others, which is specifically provided for in paragraph (4) of the definition of "economically disadvantaged family or individual." However, the Secretary agrees that receipt of a Pell grant or comparable State assistance and eligibility under Title II of JTPA are indices that would be representative of a number of economically disadvantaged students attending vocational education programs. Therefore, the definition in §400.4(b) is modified to include these indices so that a case-by-case determination under paragraph (4) of the definition is not required prior to using them.

Changes: The definition of "economically disadvantaged family or individual" in §400.4(b) has been modified to include an individual who receives a Pell grant or assistance under a comparable State program of need-based financial assistance, or who is eligible to participate in programs assisted under Title II of the JTPA. A conforming change is made to §403.114(a).

Comments: One commenter suggested that the definition of "economically disadvantaged family or individual" should incorporate the description utilized in §403.114.

Discussion: The definition of "economically disadvantaged family or individual" incorporates the same criteria used to identify numbers of economically disadvantaged students attending vocational education programs in §403.114(a).

Changes: None.

Comments: One commenter recommended that the definition of "economically disadvantaged family or individual" be modified by adding "or the Office of Management and Budget" following "from the Department of Commerce." The commenter pointed out that, since JTPA program eligibility is based on data available from the Office of Management and Budget (OMB), the same data source should be available to the Secretary for defining this term in the Perkins Act.

Discussion: The data to which the commenter refers is known as the OMB Poverty Guidelines but is officially entitled the "HHS Poverty Guidelines" and is published annually in the *Federal Register* the Department of Health and Human Services. The Secretary agrees that this publication is a direct source of data on poverty thresholds and should be reflected in the regulations so that a case-by-case determination under paragraph (4) of the definition of economically disadvantaged family or individual is not required prior to using these data.

Changes: The phrase "or the Health and Human Services Poverty Guidelines" has been added to paragraph (3) of the definition of "economically disadvantaged family or individual" following the reference to the Department of Commerce. A conforming amendment has been made to §403.114(a) and to the definition of "acute economic need" in §401.5(b).

Definitions — Individual with disabilities (§400.4(b))

Comments: One commenter asked that the definition of "individual with disabilities" be clarified. Specifically, the commenter asked what constitutes a "major life activity." Also, the commenter asked if self-identification of a disability is acceptable or if there must be an official determination by a Federal or State agency.

Discussion: The definition of "individual with disabilities" in §400.4(b) is based on the definition of "disability" in section 3(2) of the Americans With Disabilities Act of 1990 (ADA) and includes an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of that individual, has a record of this type of impairment, or is regarded as having this type of impairment. The Secretary believes the definition of "individual with disabilities" in §400.4(b) should be modified in order to clarify the relationship between this definition and other definitions used under Part B of the IDEA and under section 504 of the Rehabilitation Act of 1973.

A "major life activity" is defined in the legislative history of the ADA to mean functions such as "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and participating in community activities." (H.R. Rep. 485(II), 101st Cong., 2d Sess. 52 (1990).) This is consistent with the definition of "major life activity" in 34 CFR 104.3(j)(2)(ii), which implements section 504 of the Rehabilitation Act of 1973, as it applies to each recipient of Federal financial assistance from the Department of Education.

A student may identify himself or herself as having a disability, but the evaluation and determination of this condition is carried out by the eligible recipient. Under the Perkins Act, an eligible recipient must identify the number of students with disabilities enrolled in vocational programs operated by the eligible recipient. Under section 111(c) of the Act, any State participating in programs authorized by the Act must designate or assign the head of the State office responsible for administering Part B of IDEA to review the implementation of the provisions of the Act as they relate to students with disabilities to ensure that eligible recipients have identified the number of students with disabilities enrolled in the eligible recipients' vocational programs. Additionally, any LEA also receiving funds under Part B of the IDEA is obligated, as a condition of receiving those funds, to locate, identify, and evaluate any student who is suspected of having a disability.

Changes: The Secretary has modified the definition of "individual with disabilities" in §400.4(b) to clarify that this definition is based on the definition of "disability" as that term is defined in the ADA. The Secretary also has added a note to clarify that this definition necessarily includes any individual who has been evaluated under Part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services, and any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

Definitions — Terms regarding individuals with disabilities (§400.4(b))

Comments: One commenter suggested that terms relating to individuals with disabilities be added to the definitions section of the regulations. These include "disabled," "children with disabilities," and "transition for children with disabilities."

Discussion: It is Department practice to include in regulations definitions of terms only if necessary to implement the statute. Clearly, "children with disabilities" and "disabled" are included within the definition of an "individual with disabilities." The term "transition for children with disabilities" is not used in the regulations.

Changes: None.

Definitions — Individualized education program (§400.4(b))

Comments: One commenter suggested that the term "individualized education program" (IEP) be defined directly in the regulations rather than referring to the sections of the IDEA that contain the definition. Another commenter suggested that the definition of the term "individualized education program" be expanded.

Discussion: IEP is defined by reference because it is necessary for recipients to be made aware of the particular document to which the Secretary refers, rather than to receive guidance on how to develop an IEP as is provided in the definition of IEP in section 602(20) of the IDEA.

Changes: None.

Definitions — Local educational agency (§400.4(b))

Comments: One commenter suggested that the definition of "local educational agency" (LEA) should exclude local agencies that are created specifically to administer the Job Training Partnership Act (JTPA).

Discussion: Determination of whether agencies created specifically to administer the JTPA, that is, the so-called "private industry councils" (PICs), are included in the definition of LEA would have to be made on a case-by-case basis. However, the Secretary does not believe that a PIC generally would satisfy all the conditions of that definition. It may be possible for a PIC to fall within the final part of the definition of LEA, which includes "any other public educational institution or agency having administrative control and direction of a vocational education program." "Public" is defined in 34 CFR 77.1 to mean that an agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government. Clearly, the definition of LEA does not include a PIC that is incorporated as a private nonprofit organization, as permitted by section 103(e)(1) of the JTPA, or a PIC that does not administer directly any vocational education program, as would be permissible under 102(b)(1)(B) of the JTPA. However, a PIC that is a private nonprofit organization and that does provide job training services may qualify for funding under the Act as a "community-based organization."

Changes: None.

Comments: Some commenters questioned whether the definition of "local educational agency" includes tribally controlled school districts.

Discussion: The commenters did not provide sufficient information about what they meant by the term "tribally controlled school district" for the Secretary to determine whether the entity described is within the definition of an LEA. In any case, a State determines in the first instance whether a particular entity is an LEA based on the definition of LEA in §400.4(b) and related definitions in 34 CFR 77.1.

Changes: None.

Definitions — Single parent (§400.4(b))

Comments: A commenter expressed concerns that the definition of "single parent" may be confusing to those who are neither unmarried nor legally separated, but who are separated from a spouse prior to divorce. The commenter argued that a legal separation is not a common practice, but that married couples often separate prior to legalizing the separation through a divorce or other means. The commenter recommended that the term "legally" be deleted from the definition of "single parent" to make the definition more responsive to the needs of a single parent who may be in the process of obtaining a legal separation of some type.

Discussion: The definition repeats section 521(30)(A) of the Act which requires, in part, that a person to be unmarried or legally separated from a spouse in order to qualify as a single parent. However, the question of whether an individual is "legally separated" is an issue outside the scope of the Act and, generally, must be decided as a matter of State law.

Changes: None.

Definitions — Special populations (§400.4(b))

Comments: One commenter recommended that the definition of "special populations" be clarified to include displaced homemakers, single parents, and single pregnant women.

Discussion: The Secretary does not believe it is appropriate to expand the unambiguous statutory definition of "special populations" to include these individuals. However, the Secretary notes that many of these individuals might well be participating in programs designed to eliminate sex bias and, thus, would be members of a special populations on this basis.

Changes: None.

Definitions — Vocational education (§400.4(b))

Comments: One commenter objected to the phrase "or a sequence or aggregation of occupational competencies" as it appears in the definition of "vocational education" in §400.4(b). The commenter argued that this language could be interpreted to authorize a single course of even the shortest length and most superficial content.

Discussion: In defining "vocational education," the Secretary was guided by the statutory definition of "vocational education," which specifically includes competency-based applied learning. Although the statutory definition of "vocational education" is ambiguous, the Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act. Frequently, vocational offerings designed to prepare students for employment are structured not on the basis of a sequence of courses, but rather on the aggregation of competencies necessary to perform a job. This is particularly true in the case of adult training and retraining programs. However, the Secretary does not agree that a single course having a short length and superficial content would be within the definition of "vocational education." This definition imposes numerous requirements concerning the content of a vocational education program that a short, superficial course would not satisfy.

Changes: None.

Comments: One commenter recommended clarifying that the term "applied technology education" as it appears in the definition of "vocational education" is not synonymous with the term "technology education" as defined in §400.4(b).

Discussion: The Secretary agrees that the term "applied technology education" as used in the definition of "vocational education" is not interchangeable with the term "technology education" as defined in section 521(39) of the Act. Item 285 of the Conference Report accompanying the Act indicates that the House bill revised the definition of "vocational education" and relabeled it as "applied technology education." (H.R. Rep. No. 660, 101st Cong., 2d Sess. 155 (1990).) The conferees agreed to the revised definition but retained the term "vocational education" and indicated that the term includes "applied technology education," the term used in the House bill.

The legislative history of the Act is clear that the House bill used "applied technology education" in a manner distinct from the use of the term "technology education." The report of the Committee on Education and Labor indicates that the Committee was aware that there is a movement to rename industrial arts programs as technology education programs. (H.R. Rep. 41, 101st Cong., 1st Sess. 6 (1989).) The Committee specifically indicated that it did not wish its proposed amendments to be confused with the name change of industrial arts programs and that the amendments using the term "applied technology education" would apply only to programs leading to academic and job competencies.

Changes: None.

State committee of practitioners (§400.6)

Comments: Several commenters expressed a concern that the membership of the Committee of Practitioners (Committee), as required by section 512(a) of the Act and implemented in §400.6, does not include representatives from higher education. A number of other commenters indicated that the Committee is composed of too many representatives of secondary education which will have an adverse effect on the development of performance standards and measures relating to postsecondary education. These commenters recommended that the Committee be expanded to include more postsecondary education representatives. Still another commenter expressed concern that the Committee did not have a representative of individuals with disabilities.

Discussion: Section 512(a) of the Act establishes the membership requirements of the State Committee of Practitioners, which does not specifically include a representative of individuals with disabilities, but which, contrary to one comment, does include representatives of institutions of higher education. Section 512(a) of the Act on its face requires that representatives of LEAs constitute a majority of the Committee membership. The Secretary does not believe it is appropriate to modify these unambiguous membership requirements by regulation.

Changes: None.

State rules or regulations (§400.7(b)(3))

Comments: One commenter suggested that sections 512 and 513 of the Act are redundant. Section 512 of the Act, which is implemented in §400.7, requires any proposed or final State rule or regulation to be reviewed by the Committee of Practitioners. Section 513 of the Act, which is implemented in §400.9(c), requires a State to identify State imposed requirements. The commenter recommended that §400.7(b)(3) be deleted from the final regulations, thereby reducing the redundancy of sections 512 and 513 of the Act.

Discussion: The purpose of §400.7(b)(3) is not to establish an additional requirement that might cause a redundancy with the requirement of section 513 of the Act to identify State-imposed requirements. Section 400.7(b)(3) clarifies that any State policy that is binding on recipients is subject to the review of the State Committee of Practitioners. Section 513 of the Act requires that any State-imposed rule or policy be so identified, which is a separate and distinct requirement.

Changes: None.

Reporting requirements (§400.10 and Appendix B)

Comments: Although several commenters supported accountability in education programs, the commenters did not agree that the regulations should expand on the law and require more paperwork for many of the programs, e.g., Indian Vocational Education Program, Native Hawaiian Vocational Education Program, National Tech Prep Education Program, etc.

Many commenters thought that the monthly and quarterly reporting requirements in §400.10(b) would apply to State-administered programs and therefore would affect local agencies participating under the Act. These commenters were concerned that keeping records and gathering data would divert funds or attention away from such aspects as improving the educational process, program implementation, achieving results, and meeting the needs of program participants.

Five commenters suggested that the Department should consider a more simplified, less burdensome approach to accountability. Two commenters thought that monthly and quarterly performance and financial reports in addition to annual reports would be excessive and that annual reports should suffice for accountability purposes. Two commenters noted that the Act includes no such reporting requirements. One commenter noted that the reporting requirements proposed for the National Tech-Prep Education Program are unrealistic and their frequency and timelines are inconsistent with at least one State's accounting and reporting requirements.

Discussion: Due to its silence on the issue of reporting under the State-administered formula grant programs, the summary of Major Provisions, paragraph (1)(e), Reporting Requirements, in the preamble to the proposed regulations, may have created a misimpression when it stated that, "To implement this strategy, §400.10 establishes a general reporting requirement that must be met by recipients of funds under the Vocational and Applied Technology Education Programs. Appendix D contains the specific information that the Secretary intends to require any grantee to submit in order to comply with the reporting requirements in §400.10." Because neither the Summary of Major Provisions nor §400.10 differentiated clearly between reporting requirements for federally administered discretionary programs and State-administered programs, it is possible that at least some of the commenters believed that all recipients of funds under the Act would have to meet the reporting requirements outlined in §400.10(b).

Under §400.10(b), the Department proposed that most discretionary grant recipients be required to provide both quarterly and annual progress reports. The §400.10(b)(2) requirement for monthly progress reports applies only to the National Network for Curriculum Coordination in Vocational and Technical Education Program. The §400.10(b)(3) requirement for a monthly exception report applies only to the National Center or Centers for Research in Vocational Education Program. Specific expectations for reporting activities and accomplishments under the State-administered formula grant programs were not explicated in the proposed regulations. The Secretary expects to require only annual performance reports from the States on State-administered formula grant programs, including the State-Administered Tech-Prep Education Program.

The Secretary agrees with the commenters that changing the reporting requirement for the discretionary programs listed in §400.10(b)(1) from one for quarterly performance reports to one for only annual performance reports would have the advantage of reducing the paperwork burden on grantees. However, the Secretary would also consider such a change as having distinct disadvantages. First, requiring performance reports for discretionary programs to be submitted only on an annual basis would deprive the Department of timely information needed to identify those projects that may be experiencing difficulty in accomplishing certain program objectives. In many cases, grantees may need early technical assistance from the Department in order to improve their projects. In the past, delay in providing the Department with information about project performance has resulted in certain grantees' failure to complete their projects successfully, whereas, had the grantees received timely technical assistance from the Department, the projects might have been successful. Second, since a grantee would have a full 90 days after the end of a project period within which to file its annual performance report, by the time the report was received by the Department there would be insufficient time for the Department to consider the information provided in determining whether to fund a subsequent year's award. For grants ranging in length from 12 to 36 months, annual reports, while generally containing adequate summaries of project information for accountability purposes, have supplied the Department with information that has been both untimely and inadequate for the purposes of planning and project assistance. Thus, while the Secretary recognizes that reducing the reporting requirement from a quarterly reporting requirement to an annual reporting requirement would reduce paperwork burden for grantees, the Secretary believes that, for many of the discretionary programs funded under the Act, requiring grantees to report to the Department more frequently than once a year is essential to the Secretary's ability to provide adequate stewardship over the Federal funds awarded. Accordingly, in response to the commenters, the Secretary has amended §400.10(b)(1) to require the submission of performance reports to the Department at least on a semi-annual basis rather than on a quarterly basis. In the event that the Secretary determines that additional reports are necessary in order to ensure program integrity and accountability, the Secretary will so notify grantees. If the information in question is available from other sources, such as continuation applications or ongoing Federal evaluation activities, the Secretary will not require recipients of grants or cooperative agreements under any of the parts listed in §400.10(b)(1) to submit performance reports more frequently than on a semi-annual basis. Moreover, in the event that the Secretary determines that additional reports are necessary under one or more of those programs, under the Paperwork Reduction Act, requiring such additional reports would constitute an information collection request that would be published in the *Federal Register* and subject to public comment and approval by the Office of Management and Budget, thus ensuring that the burden with which the commenters were concerned would be kept to a minimum.

Changes: Section 400.10(b)(1) has been revised to require that recipients of grants and cooperative agreements under Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 must submit project performance reports to the Department at least semi-annually, rather than quarterly. A new paragraph (c) has been added to §400.10 to clarify that recipients of State-administered vocational and technology education grants under Parts 403, 406, and 407 are required to submit annual performance and financial reports to the Department.

Comments: One commenter noted that since the school year is approximately nine months long and encompasses part of two calendar years, annual reporting does not result in the desired effect of clearly reflecting a program's success. The commenter believes, however, that "annual" reporting for student achievement, completion, and placement rates would result in a truer picture than quarterly reporting. This commenter believes that emphasis should be placed on implementing programs rather than on paper compliance.

Discussion: The Secretary calculates "annual" reporting from the effective date of a grant to 12 months later. The term "annual reporting" in the regulation, thus, relates not to a calendar year but to 12 months of program or project operation. The primary purpose of the semi-annual reporting required in §400.10(b)(1) is that of enabling the Secretary to track the progress of an applicant in meeting operational objectives laid out in the original proposal. The Secretary agrees with the commenter's observation that project or program success by way of outcomes can best be tracked through annual reports. However, as the Secretary has already stated in response to comments relative to the NPRM's quarterly reports requirement for discretionary grants, annual reports are an insufficient basis upon which to plan monitoring and technical assistance, particularly since many program or projects last only 12 to 18 months. The Secretary remains convinced that having recipients under certain projects report progress more frequently than annually is essential to responsible grant and contract management and that the requirement for at least semi-annual reporting does, in fact, place emphasis upon the effective implementation of programs, as was suggested by the commenter.

Change: None.

PART 401 — INDIAN VOCATIONAL EDUCATION PROGRAM

Definitions — Bureau-funded school (§401.5(b))

Comments: One commenter noted that Bureau of Indian Affairs-funded (BIA-funded) grant schools were inadvertently left out of the definition of "Bureau-funded schools." This commenter suggested that the Department add, at the end of the definition, the phrase, "or by Title V, Part B—Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501, *et seq.*)."

Discussion: BIA-funded grant schools are included in the definition of Bureau-funded schools through the use of the phrase, "A school for which assistance is provided under the Tribally Controlled Schools Act of 1988."

Changes: None.

Submission of applications (§401.10(a))

Comments: One commenter noted that the term "tribal organization" as defined in §401.5(b) would include BIA-funded contract and grant schools and tribal colleges. The commenter therefore suggested that the phrase, "other than a Bureau-funded school as defined in §401.5," be added to the regulation to clarify that the requirement for the submission of applications under §401.10(a) does not apply to Bureau-funded schools.

Discussion: The Secretary agrees that §401.10(c) was intended to provide Bureau-funded schools flexibility to submit their applications directly to the Secretary or through an Indian Tribe, whichever best suits the proposed project. Section 401.10(a) is intended to apply to other tribal organizations that must submit their applications through an Indian tribe.

Changes: Section 401.10(a) has been changed to clarify that Bureau-funded schools are not subject to the application provisions in that section.

Selection criteria (§401.21)

Comments: One commenter noted that the Secretary's heavy emphasis in §401.21 on job placement may communicate a program bias against continuing work-related education and training in postsecondary institutions. This commenter asked that the selection criteria make explicit reference to the fact that "job placement" does not require immediate job placement after completion of a vocational education course to the detriment of high school students who wish to pursue additional education.

Discussion: Although job placement is an important factor in this program, the Secretary agrees that it is also appropriate for a project to place participants in additional training opportunities that are related to a participant's training under the project. The additional training opportunities could very well include enrollment in postsecondary education or military specialties.

Changes: Section 401.21(a)(1) and (g) have been revised to clarify that placement in training programs or the military are appropriate activities.

PART 403 — STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAM

Additional responsibilities of the State board (§403.12(b)(1))

Comments: One commenter suggested clarifying §403.12(b)(1), to indicate that a State's technical committees must develop an inventory of skills needed for occupational areas that includes basic and advanced academic skills and specific and general occupational skills. The commenter stated that this is important to ensure that the work of these technical committees is consistent with the central provisions of the Act that set forth the range of skills that will be used for purposes of assessing and evaluating programs. In addition, the commenter believes that the change would reflect congressional intent that committees focus on basic and advanced academic skills and general occupational skills, not just narrow skill training.

Discussion: The Secretary agrees that the types of skills identified by the commenter should be included in an inventory of skills, as appropriate. However, the Secretary believes that §403.12(b) is sufficiently specific on this matter. A State board may provide additional guidance to its technical committees if it chooses to do so.

Changes: None.

Duties of State personnel responsible for the elimination of sex discrimination and sex stereotyping (§403.13(a)(11))

Comments: Several commenters requested an explanation of the requirement in §403.13(a)(11) that State personnel working full time to assist the State board in administering the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program by "managing the distribution of funds" under those programs. Specifically, the commenters asked whether the so-called "sex equity coordinator" is solely responsible for the determination of recipients selected, the amounts of awards, and the priorities for each program.

Discussion: Section 111(b)(1) of the Act requires any State that wishes to participate in programs under the Act to assign one individual within the appropriate agency as designated or established by the State board to act as the "sex equity coordinator." That agency, consistent with State board policy and the requirements of the Act, defines the organizational responsibilities of the "sex equity coordinator." While the Secretary believes that Congress intended a State board to allow the "sex equity coordinator" to have considerable involvement in decisions regarding the Sex Equity Program and the Single Parents, Displaced Homemakers, and Single Pregnant Women Program, the Secretary does not believe that this was intended to diminish a State board's continuing authority as the sole State agency responsible for the administration or the supervision of the State vocational education programs. The Secretary believes that the Act together with the regulations in Part 403 provide sufficient guidance in this respect and that additional regulations, which might inappropriately limit State flexibility, are not warranted.

Changes: None.

Personnel requirements regarding coordination with services for individuals with disabilities, services under Chapter 1 of Title I of the Elementary and Secondary Act, and programs for individuals of limited English proficiency (§§403.14, 403.15, and 403.16)

Comments: One commenter noted apparent inconsistencies in §§403.14, 403.15, and 403.16, which require State personnel to coordinate services for individuals with disabilities, economically disadvantaged students, and individuals of limited English proficiency, respectively. While §403.14 provides for a review of eligible recipients' plans, §§403.15 and 403.16 require a review of eligible recipients' applications. In addition, the commenter requests that the review criteria be uniform to the extent possible.

Discussion: Although sections 111(c), (d), and (e) of the Act refer to the review of "plans," the Secretary believes it is clear that Congress was referring to "applications" for funding submitted by eligible recipients. The Secretary agrees that this term should be used uniformly in §§403.14, 403.15, and 403.16. With respect to consistency of the criteria for review set forth in these sections, the Secretary finds that variations reflect differences in the applicable language contained in sections 111(c), (d), and (e) of the Act.

Changes: Section 403.14(a) has been changed to clarify that the documents to be reviewed are applications submitted by eligible recipients.

Comments: Several commenters suggested that in addition to the requirement for the head of the State offices responsible for administering Part B of the Individuals with Disabilities Education Act (IDEA), Chapter 1 of Title I of the Elementary and Secondary Education Act, and programs for students of limited English proficiency (or their designees) to review all or a representative sample of the applications received from eligible recipients, the Secretary should also require that those officials monitor and evaluate the implementation of approved plans.

Discussion: Section 113(b)(3) of the Act requires the State board to monitor its eligible recipients' programs with respect to whether they are meeting the needs of members of special populations. This is reinforced by the requirements of section 118(a)(3)(E) and (4) of the Act related to monitoring. Thus, while a State voluntarily may delegate its monitoring and evaluation responsibilities pursuant to section 111(a) of the Act, the Secretary believes it would be inappropriate to require a State to have the State personnel referred to in §§403.14, 403.15, and 403.16 perform monitoring and evaluation functions.

Changes: None.

Comments: Several commenters suggested deleting from §403.15 the word "economically" so that State personnel must review the identification of, and provision of services to, all disadvantaged students—not just economically disadvantaged students. The commenters argued that, while use of the term "economically" conforms to the language in section 111(d) of the Act, upon which §403.15 is based, it is not consistent with the overall language of the Act that accords special status to both academically and economically disadvantaged students.

Discussion: The requirement of §403.15 reflects the unambiguous language of section 111(d) of the Act. The Secretary does not believe that it is appropriate to impose additional requirements to review services to all disadvantaged students rather than just economically disadvantaged students.

Changes. None.

State council — Establishment (§403.17)

Comments: Several commenters suggested that §403.17 be revised to allow State council members to be appointed for 3-year terms on a staggered basis. Some commenters also suggested that State council members should be removed only "with cause." One commenter supported these suggestions by stating that for State councils to be independent, members must be free from intimidation by the appointing authority.

Discussion: As was the case under the predecessor statute, under section 112 of the Act as implemented by §403.17, a State appointing authority (the Governor, or in a State in which members of the State board of education are elected, the State board of education) currently has the option of appointing State council members for staggered terms so long as the appointing authority maintains a duly certified State council throughout the period covered by the State plan. The Secretary finds no basis in the Act for requiring terms of specific duration, limitations upon the duration of terms, or the appointment of members to staggered terms. Nor does the Secretary consider it necessary to the proper functioning of State councils or to ensuring the independence of State councils to impose these requirements upon State appointing authorities.

With regard to the commenters' suggestion that appointing authorities be permitted to remove State council members only for cause, the Secretary wishes to point out that the Act also does not mandate any specific procedures for the removal or replacement of council members. Under section 112 of the Act, an appointing authority may appoint and remove council members at will so long as the action is consistent with State law and does not impede the fiscal and administrative independence of the State council, and so long as the State council remains in compliance with the membership and certification requirements of section 112 of the Act. Thus, the Secretary has determined that it is not appropriate to develop specific regulations governing the appointment or removal of State council members. Rather, in view of the flexibility provided in the Act, the Secretary considers it preferable to allow a State appointing authority to appoint and remove State council members in a manner to be determined by that appointing authority. In specific response to the commenter's concern regarding what is referred to as the potential intimidation of a State council by an appointing authority under the statutory appointment scheme, notwithstanding the determination that a State should retain the flexibility afforded to it by section 112 of the Act, the Secretary fully expects each State council to be operated free from intimidation by the appointing authority, in keeping with the requirements of section 112(e) and (f) of the Act, as implemented by these final regulations.

Changes: None.

Comments: One commenter objected to the requirement that each State recertify to the Secretary any new members of a State council within 60 days after the position is vacated. The commenter indicated that 60 days is an insufficient period and recommended that 120 days be allowed.

Discussion: The Secretary considers it important to the proper and efficient functioning of a State council to have all council vacancies filled expeditiously. The Secretary believes that 60 days is a reasonable period of time within which to require States to fill and to certify council vacancies.

Changes: None.

State council — Membership (§403.18(b)(2)(i))

Comments: One commenter pointed out a discrepancy between the language in section 112(a)(2) of the Act and §403.18(b)(2)(i). The commenter noted that while section 112(a)(2) of the Act provides that each State council must consist of "six individuals who are representatives of secondary and postsecondary vocational institutions (equitably distributed among such institutions)... of whom one member shall be representative of special education...," §403.18(b)(2)(i) states that each State council must consist of "six individuals, one of whom must be representative of special education, who are representative of secondary and postsecondary vocational institutions (equitably distributed among those institutions)." The commenter did not make clear his objection to the phrasing in §403.18(b)(2)(i) other than to state his opinion that the language in the Act was clearer.

Discussion: The Secretary wishes to clarify that in this provision the Secretary did not intend to impose a requirement different from the requirement contained in section 112(a)(2) of the Act. Rather, §403.18(b)(2) was intended to implement and state more clearly the requirement contained in section 112(a)(2) of the Act. The requirement in question is that a State appoint to its council six individuals who are representative of secondary and postsecondary vocational institutions and who are equitably distributed among those institutions.

Changes: None.

State council — Responsibilities (§403.19)

Comments: One commenter suggested that §403.19(a)(1) of the regulations be changed to specify that a State council be required to meet within 90 days following the Secretary's acceptance of its certification instead of "as soon as practical." The reason given for this proposed change is that, in the opinion of the commenter, imposing this 90-day deadline would prevent the appointing authority from delaying the appointment of council members.

Discussion: The Secretary agrees with the commenter that appointments of members to a State council should be made as expeditiously as possible. However, in section 112(c) of the Act, a State council is specifically provided with the flexibility to schedule its first meeting "as soon as practical after certification has been accepted by the Secretary...," leaving it to the discretion of the council to determine the timing of its first meeting, taking into account the variety of considerations that might come into play in scheduling such a meeting. In the view of the Secretary, imposing a specific deadline upon a council for the scheduling of its first meeting following the Secretary's acceptance of certification (such as that of 90 days as was suggested by the commenter) would eliminate the flexibility provided to a State council in section 112(c) of the Act while having a questionable effect upon the appointing authority's timing of appointments to the council. Moreover, the Secretary wishes to point out that section 112 of the Act as well as these regulations already contain requirements that are likely to encourage a State appointing authority to appoint council members expeditiously. First, under section 112(b) of the Act, a State is required to certify to the Secretary the establishment and membership of its State council by the beginning of each State plan period and cannot receive its grant award until council certification has been accepted by the Secretary. Second, §403.17(b) specifically requires a State to certify the establishment and membership of its council by June 1st prior to the beginning of each State plan period. Third, the Secretary's acceptance of certification cannot occur until all 13 members have been properly appointed to the council. The Secretary is hopeful that these requirements will result in an expeditious State council appointment process and has concluded that it is neither appropriate nor necessary to impose a deadline for a first meeting by a State council, as has been proposed by the commenter.

Changes: None.

Comments: Several commenters were concerned that the State councils were losing independence and requested that §403.19(c) be rewritten to ensure independence. Specifically, the commenters requested that this provision be expanded so as to prohibit a State council from performing services for other councils or agencies and to affirm that the expenditure of a State council's funds must be determined solely by that State council.

Discussion: While each State must establish a State council that fulfills all the requirements of section 112 of the Act, there is no prohibition in the Act against cooperation and coordination between the State council, job training and employment councils, or other State advisory councils or groups. In fact, this cooperation and coordination is contemplated by section 112 of the Act and the requirements contained therein relative to State Job Training Coordination Councils and State Councils on Vocational Education. Moreover, a State council may participate in or serve as a State council with broader vocational training or employment responsibilities, such as a "Human Resource Investment Council" or other "super council" so long as its activities, functions, and composition meet all the requirements of the Act pertaining to State Councils on Vocational Education. However, it is also clear that in carrying out the coordination functions contemplated in section 112 of the Act, neither the State nor a State entity may restrict a State council so as to prevent the council from carrying out its functions under the Act in an independent fashion. Section 112 of the Act specifically requires each State council to have sufficient administrative and fiscal independence to carry out its statutory responsibilities in that the administrative and fiscal independence of a State council is expressly provided for in sections 112(e) and 112(f)(2) of the Act. Section 112(e) of the Act, as implemented by §403.19(c)(1), authorizes a State council to obtain the services of personnel or contract for services so that the council may carry out its functions under the Act, including evaluation functions. Section 403.19(c)(2) requires a council to carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. (See discussion of §403.19(c) in this Appendix.) Section 112(f)(2) of the Act, as implemented by §403.19(c)(3)(i), provides that the expenditure of funds for a State council "is to be determined solely by the State council for carrying out its functions under [the Act], and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual." It is the view of the Secretary that §403.19 appropriately conveys both the requirement for coordination as described in this discussion, as well as the requirement for administrative and fiscal independence of the council.

Changes: None.

Comments: One commenter suggested that §403.19(c)(1) be reorganized to combine paragraphs (c)(1)(i) and (ii). The commenter believed that this change would more accurately reflect the intent of section 112(e) of the Act.

Discussion: The Secretary has reviewed section 112(e) of the Act and agrees with the commenter that a revision of §403.19(c) is needed. The Secretary has revised this provision to more accurately reflect the requirement in section 112(e) of the Act that a State council must carry out all of its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. In these final regulations, the clause pertaining to the independence of the council now refers to those functions that are performed directly by council personnel as well as to those functions that the council may choose to perform by contracting for services.

Changes: The clause containing the requirement that the council perform its functions independently has been deleted from §403.19(c)(1)(ii). The Secretary has added a new paragraph (3) to §403.19(c), which provides that in carrying out any of its functions, whether carried out directly by council personnel or by way of one or more contracts for services, a State council must carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals.

State plans — Development (§403.31)

Comments: One commenter requested that §403.31(b), relating to public hearings, require that organizations and groups that are composed of, or represent, parents, students, and special populations be consulted in developing notices and hearings to ensure that they have genuine opportunities to participate in the process. The commenter stated that reports from various States indicate that these entities are not receiving timely notice, and that, where notice is provided, sufficient information for purposes of providing informed input sometimes is not available.

Several other commenters, however, expressed concern that the requirement in §403.31(c) to provide public notice of a hearing on a State plan at least 30 days in advance is not expressly contained in the statute and may conflict with State laws.

Discussion: Sections 403.31(b) and (c) implement section 113(a)(2)(B) of the Act, which provides that a State must hold public hearings on the State plan, after giving "appropriate and sufficient notice" to the public. The Secretary believes that some guidance is required to ensure that adequate time is provided for the public to prepare for a hearing, and that the provision in §403.31(c) requiring 30 days notice is not burdensome for the State board. In response to the comment that the provision for 30 days notice conflicts with State law, the Secretary notes that, under §403.32(a)(1), a State must make an assurance in its State plan that it will comply with the Act and the implementing regulations.

With respect to the comment that the regulations should provide for the participation of various groups in preparation of the notice to ensure that the notice provides the information necessary for informed participation, the requirement for appropriate and sufficient notice in §403.31(b) applies not only to the timing of the notice but also to its form and content. The Secretary would like to clarify that, in order to meet this requirement, the State must design a notice that includes information, or instructs members of the public in how to obtain information, that is sufficient to enable members of the public to present informed views and make recommendations on the plan at the hearing.

Changes: None.

Comments: One commenter suggested the insertion of "academic, occupational" before "training and retraining needs" in §403.31(f) in order to be consistent with section 113(a)(3)(A) of the Act. The commenter also requested the addition of "and determining the relative allocation of funds among secondary, postsecondary, and adult vocational education programs" after "in developing the State plan."

Discussion: Section 403.31(f) implements section 114(a) of the Act, which provides that the State must consider the relative training and retraining needs of secondary, postsecondary, and adult students after consulting with the appropriate State agencies, in developing the State plan. The commenter's concern with the requirement that the State consider the academic and occupational needs is addressed in §403.203(e), which implements the requirement in section 113(a)(3)(A) of the Act that the State, in developing its plan, assess the relative academic, occupational, training, and retraining needs at the three instructional levels.

Additionally, the Secretary would like to clarify that other provisions in the regulations fully address the commenter's concern that in allocating funds between the secondary, postsecondary, and adult levels the State should consider the relative needs at the three levels. As noted, §403.203 provides for a State assessment of the needs at the secondary, postsecondary, and adult levels. Paragraphs (1), (2), and (13) of §403.32(b) provide that the State plan must describe the results of the assessment, how the uses of funds address the needs identified in the assessment, and the rationale for the distribution of funds among secondary, postsecondary, and adult programs.

Changes: None.

State plan — Content (§403.32)

Comments: Several commenters noted that section 113(b)(20)(B) of the Act appears to require an annual report by a State demonstrating that expenditures aggregated within the State for career guidance and vocational counseling from allotments under Title II are not less than the expenditures for guidance and counseling within the State in the fiscal year 1988. Noting that §403.32(a)(15) would require this report to be submitted only once during each State plan period, the commenters requested that the regulations be changed to conform to the statutory requirement for annual reporting.

Discussion: The requirement in §403.32(a)(15) for the report to be issued only once during each State plan period is based on congressional intent as expressed in the conference report (H.R. Rep. No. 660, 101st Cong., 1st Sess. 111 (1990)), which states that "[t]he managers intend that this provision will result in States reporting in the State plan on expenditures for guidance and counseling. Although the assessment is to be done annually, reporting is required only as part of the State plan."

Changes: None.

Comments: Some commenters expressed the view that a State's assurance to provide equal access for members of special populations must apply not only to programs funded under Title II of the Act but also to programs funded under Title III of the Act. These commenters also argued that the equal access requirements should not be limited to projects supported with Federal funds. According to one commenter, a contrary interpretation would allow States and other agencies to use "empty pockets" as an excuse not to serve special populations students.

Another commenter supported the provisions of the regulations that clarify that an eligible recipient is required to spend only Federal funds to satisfy the requirements imposed by section 118 of the Act. However, the commenter noted that the regulations did not clarify a State's financial responsibility for providing equal access under §403.32(a)(18)-(19), and recommended that the Secretary adopt the same rule for both States and eligible recipients and clarify that a State is not required to use non-Federal funds to meet these requirements.

Discussion: The Secretary intends the State assurances to provide equal access that are required by §403.32(a)(18)-(19) to apply to the entire vocational education program operated by the State and its recipients. These assurances broadly require that members of special populations will be provided equal assess to the full range of vocational education programs available to members of the general population, including the specific projects, services, and activities funded under the Act. Equal access required by these provisions means providing members of special populations with an opportunity to enter vocational education that is equal to the opportunity provided to general population students. See the discussion in response to a comment on §403.111(a)(2)(i) and (c)(3). The Secretary does not believe that it is possible or appropriate to limit application of the assurances of equal access to students in specific projects, services, and activities that are funded under the Act. To do so would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for members of special populations.

However, the Act does not create new civil rights or individual entitlements to particular services, nor does the Secretary agree that a State has an unlimited financial responsibility to serve special populations students.

Changes: A new §403.188, which contains provisions parallel to those applicable to an eligible recipient under §403.193(e), is added to clarify that a State's financial responsibility to serve members of special populations under §403.32(a)(18)-(19) is not unlimited, and that a State is required to spend only funds awarded under the Act to satisfy these requirements, unless it is required by other applicable laws to spend non-Federal funds.

Comments: One commenter noted that all special populations are covered by a State's assurances to provide equal access. The commenter supports the goal of full and equitable participation for all students in all vocational education programs — not just students with individualized education programs (IEPs) under the Individuals with Disabilities Act (IDEA).

Discussion: The Secretary agrees that §403.32(a)(18) and (19) requires a State to make an assurance that it will provide equal access to all members of special populations. However, as indicated in §403.32(a)(20) through (26), other State assurances required by section 118(a) of the Act on their face do not apply to all members of special populations. For example, §403.32(a)(22) requires a State to make an assurance that it will provide the rights and protections of section 504 of the Rehabilitation Act of 1973 to students with disabilities—not members of all of the special populations.

Changes: None.

Comments: One commenter believed that §403.32(a)(20) should require that vocational education for students with disabilities be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA as a component in an IEP for any student 16 years of age and, as appropriate, for any student 14 or 15 years of age.

Discussion: Section 118(a)(3)(A) requires that an IEP include as a component vocational education in the least restrictive environment if it is appropriate without regard to the age of the student. The Secretary believes that this requirement is clear from §403.32(a)(20).

Changes: None.

Comments: Some commenters suggested moving the phrase "with respect to vocational education programs" in §403.32(a)(21) and (22) to more closely conform to the statutory language and to clarify the meaning of the phrase.

Discussion: The Secretary believes that §403.32(a)(21) and (22) clearly refer to the rights and protections of students with disabilities with respect to their participation in vocational education programs.

Changes: None.

Comments: Several commenters requested clarification of §403.32(a)(22), which requires an assurance that students with disabilities who do not have IEPs under the IDEA, or who are not eligible to have IEPs with respect to vocational education programs, will be afforded the rights and protections afforded under section 504 of the Rehabilitation Act of 1973. The commenters believed that an IEP is by definition part of what makes a student qualified to be labeled as disabled. Thus, the commenters believed that the requirement to provide services to students with disabilities who are not eligible for services under the IDEA is internally inconsistent.

Discussion: The definition of "individual with disabilities" for purposes of the Perkins Act is contained in §400.4(b) and includes individuals in addition to those who have been evaluated under Part B of the IDEA and who have IEPs. "Individual with disabilities," which is based on the definition of "disabilities" contained in section 3(2) of the Americans with Disabilities Act (ADA), includes any individual who (1) has a physical or mental impairment that substantially limits one or more of the major life activities of that individual; (2) has a record of this type of impairment; or (3) is regarded as having this type of impairment. As the note to the definition in §400.4 makes clear, this necessarily would include any individual who is considered to have a disability under either section 504 of the Rehabilitation Act of 1973 or the IDEA.

The Secretary also wishes to emphasize that section 504 of the Rehabilitation Act of 1973 applies independently of the IDEA to any program or activity that receives Federal education funds. Section 504 prohibits discrimination against otherwise qualified individuals with handicaps in federally assisted programs or activities. That Act contains a definition of "individuals with handicaps" which includes the same individuals who would be included in the definitions related to individuals with disabilities in the ADA and the Perkins Act. Therefore, even though an individual does not qualify for an IEP under the IDEA (e.g., the individual is at the postsecondary education level or has a disability that is not covered by the IDEA), that person may be within the definition of an "individual with disabilities" for purposes of the Perkins Act.

Changes: The definition of "individual with disabilities" in proposed §400.4(b) has been changed to conform more closely to the statutory definition in the Perkins Act and to add a note to clarify the relationship of this definition to definitions contained in the IDEA and section 504 of the Rehabilitation Act of 1973.

Comments: Some commenters recommended amending §403.32(a)(26)(i)(A) to indicate that the requirement to carry out provisions related to members of special populations under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for these students refers to the personnel identified in §§403.13-403.16 — not other vocational staff. These commenters also requested that §403.32(a)(26)(i)(A) be expanded to require as part of this general supervision that the designated personnel and vocational staff jointly plan, review, and sign off on matters related to members of special populations in all phases, and that the State plan describe in sufficient detail the mechanisms by which this supervision occurs and how decisions actually are made jointly by these personnel and the State directors.

Discussion: Section 118(a)(5)(A) of the Act specifically refers to individuals in the State educational agency or in the "State board," which is defined in section 521(34) of the Act to mean the sole State agency responsible for the administration of vocational education, or for the supervision of the administration of vocational education in the State. Thus, the Secretary believes that the Act provides flexibility for a State to determine which personnel most appropriately would provide general supervision of the requirements related to members of special populations. Similarly, the Secretary believes that the State has flexibility to determine what specific responsibilities this individual will have in overseeing the implementation of requirements related to members of special populations. However, section 113(b)(23) of the Act, as implemented in §403.32(b)(12), requires that the State describe in its State plan how it will comply with the provisions related to members of special populations, which would include a description of the general supervision required under §403.32(a)(26)(i)(A).

Changes: None.

Comments: Several commenters stated that requiring a State to describe the estimated distribution of funds "for each institutional level" in §403.32(b)(4) is unduly prescriptive and outside the scope of the Act.

Discussion: The Secretary wishes to clarify that a State must describe the estimated distribution of funds to each of the types of institutions listed by "instructional" level, i.e., secondary, postsecondary, and adult education levels, and not "institutional" levels, as indicated in proposed §403.32(b)(4). This requirement applies separately to funds awarded under sections 225, 231, and 232 of the Act.

The Secretary believes that §403.32(b)(4) clarifies the ambiguity in section 113(b)(4) of the Act, which could be read to require a description of the estimated distribution of funds to each individual eligible recipient. The Secretary believes this reading would impose an unnecessary burden on a State. Section 403.32(b)(4) represents a less burdensome interpretation, requiring a State to describe the estimates by instructional level, and is consistent with the provisions in sections 113(a)(3)(A), 113(b)(1) and (2), and 114(a) of the Act that a State must, in developing its State plan, consider the needs at the secondary, postsecondary, and adult education levels, and include information in the State plan regarding these needs and how they will be met.

Changes: Section 403.32(b)(4) has been revised to clarify that a State is required to estimate the distribution of funds for each type of institution listed, by "instructional" level—secondary, postsecondary, and adult education.

Comments: One commenter stated that §403.32(b)(6) is overly prescriptive in that it requires a State to conduct a labor market analysis "that is not limited to the area in which the school is located," a requirement not contained in section 113(b)(7) of the Act. The commenter asked if this meant that the area intended by the regulation was out of the local labor market or out of the State.

Discussion: Section 403.32(b)(6) is based on congressional intent, reflected in the conference report, that the labor market analysis "not be limited to the area in which the school is located." (H.R. Rep. No. 660, 101st Cong., 1st Sess. 109 (1990)). For some occupations, a regional or multi-State labor market analysis may more accurately reflect available job opportunities. With the exception of not limiting the market analysis to the area in which the school is located, the regulations give a State the flexibility to determine the appropriate labor market area for the purposes described in §403.32(b)(6).

Changes: None.

State plans—Submission (§403.33)

Comments: Several commenters believed that the regulatory requirement for a 60-day review and comment period by the State Job Training Coordinating Council and the State Council on Vocational Education prior to the submission of State plans to the Department is not based on a statutory requirement. The commenters stated their belief that this time period is excessive.

Discussion: The Secretary believes a 60-day review period is reasonable and necessary to carry out the many provisions in the Act for coordination and review between the State board, the State council, and the State Job Training Coordinating Council. The State Council on Vocational Education (State council) is the entity formally charged with advising the State Board for Vocational Education on the development of a State plan. Section 111(a)(1)(B) of the Act requires that the State board consult with the State council in the development of the State plan, and section 113(c) of the Act requires the State council and the State Job Training Coordinating Council to review any substantial amendments to the State plan prior to submitting the amendments to the Department. Sections 112(d)(2)(A) and (e) of the Act authorize the State council to make recommendations on the State plan and to submit comments on the State plan to the Secretary, and section 113(b)(14) of the Act requires joint planning and coordination with programs conducted under the JTPA. In light of these requirements for coordination and review, the Secretary believes that the 60-day period is reasonable and necessary in order to ensure that a sufficient period of time is provided to the State council in which to perform this crucial review function.

Changes: None.

State plans — Amendments (§403.34)

Comments: One commenter requested clarification of what constitutes a "substantial" amendment to an approved State plan as set forth in §403.34.

Discussion: While general guidance regarding the determination of "substantial" is contained in §403.34 and 34 CFR 76.140(b), the Secretary believes that a State board should decide in the first instance if changes in the program require an amendment to the State plan.

Changes: None.

State allotments — Awards to State councils (§403.50(b)(2))

Comments: Several commenters requested that §403.50(b)(2) be revised so as to authorize a grant award to a State council as soon as the State council has satisfied the requirements with which it must comply, even if this results in an award to a State council being made before the State plan has been fully approved by the Secretary. The commenters stated that in making the funding of a State council contingent upon the Secretary's approval of the State plan, the regulations risk jeopardizing the objectivity of State councils since the very objections to the State plan that a council might submit could delay the Secretary's approval of that State plan and, therefore, delay the council's funding. The commenters were of the opinion that, under §403.50(b)(2), the very objectivity of a State council could lead to its fiscal demise and that the current funding scheme undermines the autonomy of a State council. The commenters suggested that the only circumstance under which a council's grant award should be withheld is when the council is not in compliance with specific requirements pertaining to State councils, and that council grants should not be withheld due to non-compliance by the State board with State plan and other statutory requirements, over which the council has no control.

Discussion: Section 501(b) of the Act provides that the Secretary shall make payment to each State council of a State that has a State plan approved under section 114 of the Act and does not specifically provide for an allotment of funds to be awarded to a State council prior to State plan review and approval. However, the Secretary has concluded that section 501(b) of the Act does provide some flexibility in this area. The Secretary recognizes that in the State plan review and approval process there may be instances where a State plan is determined by the Secretary to be in substantially approvable form at a time when the State council has fully complied with all the statutory requirements applicable to the council. The Secretary also has considered the commenters' statements regarding the potential loss of council objectivity, autonomy, or both, if a delay of council funding is the direct result of a council's legitimate objections to a State plan. The Secretary does not think that Congress intended the statutory provisions providing for an allotment to a State council to result in the undermining of the council's objectivity and autonomy or to result in providing a reward to a State council for failing conscientiously and effectively to fulfill its advisory role. It is important to recognize that, for the first time, under the Act a State board for vocational education is required to include in its State plan the results of a detailed needs assessment, as well as program planning information, that it was not required to provide under the predecessor statute. Consequently, the responsibilities of each State council have increased and the importance of each council's advisory function has been heightened by the Act. Because the Secretary believes that Congress intended each State council to assist the State board in the development of a high quality State plan in an objective and effective manner, the Secretary views a grant award to a State council as being authorized at the point at which: (1) there is no further compliance activity required on the part of the council and (2) the Secretary has determined that the State plan is in substantially approvable form. The Secretary believes that this interpretation is consistent with Part 76 of the Education Department General Administrative Regulations, under which the Secretary informs a State of when it can begin to obligate funds under the Act after the Secretary determines that the State plan is in substantially approvable form. (See 34 CFR 76.703).

Changes: The Secretary has revised §403.50(b)(2) to provide that a State council that otherwise has complied with all applicable requirements and has submitted its annual budget for the following program year will be eligible to receive its grant award for the following year once the Secretary has determined that the State plan is in substantially approvable form.

State plans — Approval (§403.52)

Comments: One commenter stated that

§403.52 should provide that the Secretary will inform the State council of the reasons for the delay or non-approval of the State plan. The commenter indicated that State councils must be involved in the planning, development, and review of the State plan, and consequently must be aware of any problems with that plan.

Discussion: As set forth in §403.19, the role of the State council with respect to State plans is limited to providing advice and recommendations on the development of those plans. There is no provision in the Act requiring the State board to include the State council in the communications between the State board and the Secretary about the State plan during the period between its submission and final action, although the State board may include the State council in this process. However, if a State has to develop a new plan in response to the Secretary's review, the State council must perform its function of providing advice and recommendations on the plan in accordance with §403.19. The Secretary wishes to point out that 34 CFR 76.106 provides that the State board is required to make available, upon request, correspondence between the Secretary and the State regarding the State plan.

Changes: None.

Comments: One commenter noted that under §403.52(a)(1) a State plan may be rejected for lack of sufficient quality, but that standards of quality are not included in the regulations. The commenter requested that these standards be stated in the regulations before this requirement is applied.

Discussion: The Secretary is considering whether to publish guidance to clarify the requirements in section 114(a) of the Act that the State plan and amendments must be of sufficient quality to meet the objectives of the Act.

Changes: None.

Comments: One commenter recommended that §403.52(b)(1) be changed to require the State board to allow 60 days for the State council and State Job Training Coordinating Council to review amendments to State plans. The commenter noted that this change would enable these councils to make comments available to the Secretary in a timely manner.

Discussion: The Secretary agrees that State councils and State Job Training Coordinating Councils should be afforded sufficient time to review and comment on amendments to State plans. The Secretary notes that §403.33 requires that these councils have at least 60 days to review and comment on State plans. However, the Secretary does not believe that 60 days are needed to review and comment on amendments.

Changes: None.

Basic programs of sufficient size, scope, and quality (§403.62)

Comments: One commenter expressed concern that the phrase "programs of sufficient size, scope, and quality" was not defined in the regulations. The commenter expressed the view that, since accountability is a goal of the new Act, defining this term would ensure that all States work with the same criteria. Another commenter suggested that the definition of "programs of sufficient size, scope, and quality" should remain unregulated in order to permit each State the flexibility to create an appropriate State definition.

Discussion: The Secretary believes that §403.62(a) is clear that programs must be of sufficient size, scope and quality to give reasonable promise of meeting the vocational education needs of students involved in the projects. See also the response to a similar comment related to "size, scope, and quality" as that term is used in §403.111(c)(1).

Changes: None.

State-operated schools (§403.63)

Comments: Several commenters expressed concern that projects, services, and activities carried out by a school operated by a State agency would be subject to the onerous application requirements for eligible recipients described in §403.190. The commenters did not believe these requirements should be applicable to a State-operated school.

Discussion: Section 403.190 implements the requirements in sections 111(c)(1), (d), and (e), 118(c), and 240 of the Act, which on their face do apply to State operated schools.

Changes: None.

State programs and State leadership activities (§403.70)

Comments: One commenter suggested that the term "projects" as it appears in the first sentence of §403.70 be changed to the term "programs" in order to be consistent with past Departmental interpretation of these terms.

Discussion: Historically, in the regulations implementing the State vocational education program, the Secretary has used the term "program" to refer to activities that are carried out directly by the State and has used the term "projects" to refer to activities carried out by subrecipients of a State. The Secretary agrees with the commenter that a change is needed in the regulations. The Secretary believes that under sections 201(b) and (c) of the Act, a State could operate a "program" by carrying out the activities directly or operate a "project" by making awards to other entities to carry out the activities.

Changes: Section 403.70 has been changed to clarify that a State may operate either a "program" or a "project." A conforming change has been made to §403.71.

Vocational student organizations (§403.71)

Comments: Several commenters expressed concern that §403.71(c) provides a list of unallowable expenditures for vocational student organizations (VSOs). These commenters were particularly concerned because the regulations prohibit the use of funds under the State Programs and State Leadership Activities for student organization travel. Some of the commenters felt that travel costs and expenses to attend leadership conferences or meetings to conduct VSO national and State association business should be an allowable expenditure under the Act and recommended that §403.71(c)(1) be revised to allow these travel costs. Several commenters indicated that the list of prohibitions on the use of funds awarded under the Act for VSOs contained in §403.71(c) will have a "chilling effect" on the recruitment of minority students. A number of commenters also recommended that §403.71(c)(2) be revised to permit Future Farmers of America officers to purchase appropriate supplies.

One commenter assumed that the restrictions in §403.71(c) on expenditures for vocational student organizations applied only to expenditures under the State Programs and Leadership Activities authority and did not extend to expenditures for VSO activities under Title II, Part C of the Act.

Discussion: The limitations listed in §403.71(c) are consistent with the section 521(42) of the Act, which defines "vocational student organizations" to mean those organizations for individuals enrolled in vocational education programs that engage in activities "as an integral part of the instructional program," and are supported by a clear statement of congressional intent in the conference report accompanying the Act. (H.R. Rep. No. 660, 101st Cong., 1st Sess. 117 (1990)). Item 86 of that report stipulates that Congress intended "that current restrictions on use of Perkins funds for awards and student travel apply to the provision authorizing States to support vocational youth organizations" under section 201(c)(3) of the Act. The regulations implementing the Vocational Education Act of 1963, as amended, listed the VSO activities in §403.71(c) as particular costs that are not integral to vocational instruction. Generally, to be an integral part of vocational education instruction, an activity would have to be supervised by vocational education personnel who are qualified in the occupational area and available to all students in the instructional program without regard to membership in any student organization. The regulations implementing the Vocational Education Act of 1973, as amended, described VSO activities that are considered to be an integral part of vocational education training, and the Secretary believes that these provide guidance to a State and its recipient as to the type of VSO costs that can be paid from funds awarded under Title II, Part A of the Perkins Act.

The limitation on expenditures for VSO activities is consistent with this Department's past practice of not allowing the use of grant funds for supportive services that provide direct financial benefit to individuals without clear statutory authority for these expenditures. This limitation applies to all funds awarded under the Act, not just funds awarded under Title II, Part A of the Act that are available for the support of VSOs.

If an eligible recipient wishes to use funds awarded under Title II, Part C of the Act for costs of VSO activities, these costs would be subject to the general limitations on supportive services as well as all other limitations on the use of funds under Title II, Part C of the Act. Because Title II, Part C of the Act authorizes the use of funds for supportive services only in very narrow circumstances and with respect to only a few particular populations, the Secretary believes that the same limitations stated in §403.71(c) generally apply to the use of funds under Title II, Part C of the Act for VSO activities. See the discussion of supportive services for students who are economically disadvantaged, students of limited English proficiency, and students with disabilities in response to a comment on §403.190(a)(2)(ii)(B). However, a VSO cost, for example, that would be allowable from funds awarded under Title II, Part C of the Act, is the cost of field or laboratory work incidental to vocational training so long as the activity is supervised by vocational education personnel who are qualified in the occupational area and is available to all students in the instructional program without regard to membership in any student organization.

Changes: Section 403.71(c) has been changed to add examples of VSO expenditures that are allowable costs under the State Programs and State Leadership Activities.

Sex Equity Program (§403.90)

Comments: One commenter requested that the conditions for the eligibility of community-based organizations to participate in the Sex Equity Program be identical to conditions established by §403.81(c) for the participation of community-based organizations in the Single Parent, Displaced Homemakers, and Single Pregnant Women Program.

Discussion: The conditions established by §403.81(c) for the participation of community-based organizations in the Single Parents, Displaced Homemakers, and Single Pregnant Women Program reflect the requirement of section 221(a)(3) of the Act. There is no parallel statutory provision for the Sex Equity Program. However, the Secretary notes that the definition of "community-based organization" in §400.4(b) requires such an organization to be of "demonstrated effectiveness" in order to be eligible for funding under any portion of the Act. A State has the authority to interpret or further define "demonstrated effectiveness" for purposes of participation in the Sex Equity Program by a community-based organization, including the imposition of all of those conditions set forth in §403.81(c). However, in this event, the State would have to identify this as a rule based on a State's interpretation pursuant to §400.9(c).

Changes: None.

Programs for Criminal Offenders (§403.102)

Comments: One commenter stated that the Senate Report accompanying the Act requires that the State corrections educational agency responsible for administering the Programs for Criminal Offenders must distribute funds available for this program to State correctional institutions, prisons, and reformatories based on the relative number of individuals incarcerated in those institutions. The commenter requested that the regulations reflect this requirement.

Discussion: While section 225 of the Act establishes the parameters within which a State corrections educational agency must use funds reserved for programs for criminal offenders, section 225 of the Act does not require a formula for the distribution of funds as discussed by the commenter. Moreover, the distribution formula referred to by the commenter is not a provision in the Act passed by Congress.

Changes: None.

Eligibility for Secondary, Postsecondary, and Adult Vocational Education Programs (§403.110(c))

Comments: One commenter felt that §403.110(c) would allow organizations not currently existing to qualify for start-up funds to participate in programs funded under section 232 of the Act. The commenter recommended that §403.110(c) be modified so that any funds received by a recipient not previously offering a vocational education program must be used to provide services within the grant year.

Discussion: Section 232(d)(1) of the Act, which is implemented by §403.110(c), includes an entity that either provides or will provide vocational education in a program that meets the requirements of section 235 of the Act as an institution eligible to receive an award under the Postsecondary and Adult Vocational Education Programs. This regulation reflects the requirement of section 232(d)(1) of the Act.

Because funds not obligated during the fiscal or program year for which the funds were allocated must be returned to the State for reallocation under §403.120(a), an entity must provide a program of services for each year an award is received.

Changes: None.

Improving vocational education (§403.111(a)(1))

Comments: Some commenters believed that a State should have the discretion to define the term "improve" as it is used in §403.111(a)(1). One of these commenters believed that the State then should be held accountable for the procedure used to determine improvement. Another commenter believed that improvement would be easier to determine once a State has adopted standards and measures under section 115 of the Act. Another commenter believed that improvement of programs should be measured by the gain in student participation and performance but recommended that all proposed activities should be funded, provided a reasonable connection is made in the local plan between each activity and improved student participation and performance. One commenter recommended adding to the regulations the guidelines on "program improvement" applicable to the Carl D. Perkins Vocational Education Act to assist States in developing criteria by which local applications can be categorized according to program improvement, expansion, or new programs.

Discussion: The Secretary believes that a State and its eligible recipients should have the flexibility to determine how funds awarded under §§403.112, 403.113, or 403.116 will be used to "improve" vocational education programs for their students. The Secretary does not believe that it is possible to develop a definition of "program improvement" that would apply in all cases. Thus, while a State is free to use the guidelines provided in the previous regulations implementing the previous act, they are not required to do so.

Changes: None.

Comments: One commenter said that, while a State could improve selective parts of vocational education within the State with the participation of special populations, the State could not accomplish a great improvement in vocational education and at the same time ensure success of all special populations with the small amount of funds it receives under the Act. The commenter recommended that the expectation for improvement implied in §403.111(a)(1) be limited and specifically detailed.

Discussion: The requirement of §403.111(a)(1) to use funds awarded under §§403.112, 403.113, or 403.116 to improve vocational education programs applies to eligible recipients — not States. Moreover, §§403.190(c) and 403.193(e) make clear that the Act does not create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients.

On the contrary, once an eligible recipient makes an assurance to serve members of special populations in projects assisted under Title II, Part C of the Act, the eligible recipient is allowed to use Federal funds at the same time for general improvement or to serve the general student population under §403.111(a)(3).

Changes: None.

Providing full participation (§403.111(a)(2)(i))

Comments: One commenter believed that limiting the requirements of §403.111(a)(2)(i) to projects assisted with funds awarded under §§403.112, 403.113, or 403.116 creates ambiguity concerning the requirement for an eligible recipient to provide full participation for members of special populations. The commenter also argued that this is inconsistent with the regulatory provisions applicable to performance standards and evaluations, which apply to entire local vocational education programs. Some commenters argued "projects" should be changed to "programs" to be consistent with congressional intent that funds awarded under Title II, Part C of the Act be used only in local programs that provide for the full participation of members of special populations, including the provision of supplementary services, in the entire program. Another commenter argued that the use of the term "projects" rather than "programs" and the distinction created between access and required services is contrary to prior civil rights rulings and the Civil Rights Restoration Act, which defines the term "program" broadly, as well as the requirements of the IDEA and section 504 of the Rehabilitation Act of 1973.

Other commenters expressed confusion as to the applicability of the requirement in §403.111(a)(2)(i) to provide for the full participation of members of special populations by providing supplementary services. These commenters argued that the Perkins Act does not require eligible recipients to provide supplementary services to members of special populations in their State and locally funded vocational programs and recommended that §403.111(a)(2)(i) be amended to clarify that the requirement to provide supplementary services does not apply to projects not funded under the Act.

Discussion: Despite the apparent confusion of a few commenters, §403.111(a)(2) clearly applies only to projects assisted with funds awarded under §§403.112, 403.113, or 403.116. (Sections 403.112, 403.113, and 403.116 implement the provisions of the Act governing the distribution of funds under Title II, Part C of the Act.) Moreover, the Secretary believes that limiting the applicability of §403.111(a)(2) is well supported by the language of the Act itself. Section 403.111(a) implements the provisions of section 235(a) of the Act, which specifically applies only to funds awarded under Title II, Part C of the Act. Both the express language of section 235 of the Act and its placement in the provisions of the Act specifically related to funds awarded under Title II, Part C of the Act support a more narrow application of the requirement to provide full participation only in projects, services, and activities receiving Federal funds under the State plan. Moreover, the Secretary has modified §403.191 to clarify that the local evaluation required under section 117 of the Act could include only specific projects, services, and activities receiving Federal funds under the State plan, unless the State board determines under §403.201(a)(3) that a broader evaluation is necessary to be effective. See the discussion in response to comments on §403.191. Therefore, the Secretary is not taking an inconsistent regulatory approach in implementing section 235 of the Act from that used to implement the requirements of section 115 of the Act concerning standards and measures or of section 117 of the Act concerning evaluations.

Section 403.111(a) also reflects the differences in the requirements of section 235 of the Act and other Federal statutes. Section 118 of the Act does not define the requirement to provide "equal access" to members of special populations in terms of the definition of "program" in the Civil Rights Restoration Act or the requirements imposed by the IDEA or section 504 of the Rehabilitation Act of 1973. While specific requirements to provide rights and protections under, for example, section 504 of the Rehabilitation Act of 1973, are imposed in the Perkins Act, the term "equal access" as it is used in section 118(a)(1) and (2) of the Perkins Act, which is implemented in §403.32(a)(18) and (19), is not tied to the provisions of any other statute. On the contrary, the use in section 235 of the Act of the terms "equitable participation" and "full participation" in imposing requirements on eligible recipients under Title II, Part C of the Act to serve members of special populations evidences a deliberate congressional intent to distinguish the type of services required by the Act from the rights and protections ensured by other Federal statutes, such as the IDEA and section 504 of the Rehabilitation Act of 1973, which use different terminology regarding the rights of an individual with disabilities. However, the Secretary wishes to emphasize that any individual's rights and protections conferred by the IDEA, section 504 of the Rehabilitation Act of 1973, or other Federal laws are in no way limited or diminished by the Perkins Act.

Changes: None.

Comments: Some commenters believed that §403.111 was unclear that members of special populations must participate fully in the improvement of vocational education courses—not just receive supplementary services.

Discussion: The Secretary believes that §403.111 is clear as to the required participation of members of special populations. Not only does §403.111(a)(1) require that an eligible recipient use funds awarded under §403.112, 403.113, or 403.116 to improve vocational education programs, but §403.111(a)(2) additionally requires that all of the projects assisted provide for the full participation of members of special populations. Thus, members of special populations must be provided full participation in projects funded under §403.112, 403.113, or 403.116.

Changes: None.

Comments: Numerous commenters recommended deleting or narrowly defining the requirement to provide "other services" in addition to supplementary services as proposed in §403.111(a)(2) as part of providing for the full participation of members of special populations in projects assisted under §403.112, 403.113, or 403.116. Some commenters believed that a State should have the discretion to define the term "full participation." Other commenters believed that "other services" should be restricted to those related to the required supplementary services or should be defined in relation to vocational education or to education in general. Another commenter believed that, if the phrase "other services" is retained, the regulations should impose a cap or limit on the amount of funds that could be used for supplementary services. Some commenters argued that a broad interpretation of "other services" would change the intent of the Act and require the exhaustion of funds on supplementary services, thus depriving the general student population of funds. According to some commenters, using Federal vocational funds exclusively for special populations would imply that vocational education is for special populations students only and perpetuate a perceived stigma attached to vocational education. Most commenters believed that the definition of "supplementary services" in §400.4(b) clearly expresses the intent of Congress as to what specific services are required to be provided to special populations as part of the requirement for "full participation" and argued that the addition of "other services" to this provision during the negotiated rulemaking created ambiguity, an open-ended requirement that was impossible to satisfy, and unlimited financial liability on the part of eligible recipients.

Other commenters concurred in or strongly supported the mandate to provide full participation through supplementary and other services to all members of special populations, including individuals in correctional institutions. One commenter noted that the addition of the words "other services" would mean that supplementary services" are not limited only to those specific services listed in the definition of that term in §400.4(b). The commenter believed that this indicated a confidence that local program officials are able to determine the range of supplementary services most appropriate to the needs of their special populations students. Another commenter thought that "other services" should include child care, stipends, preparatory services, or tuition. This commenter believed that, if the Secretary intended to exclude these costs from allowability, then §403.111(a)(2)(i) should be clarified to prevent an eligible recipient's audit exposure.

Discussion: The Secretary agrees that the requirement in proposed §403.111(a)(2)(i) to provide "other services" in addition to the supplementary services required by section 118(c) of the Act has created a great deal of confusion concerning what specific services an eligible recipient is required to provide to special populations students. The negotiators recommended the addition of this phrase to the draft regulation to clarify that an eligible recipient has the flexibility to serve its special populations students in the most suitable manner, which includes providing services other than the services within the definition of "supplementary services" as that term is defined in §400.4(b), when an eligible recipient chooses to do so. However, even though many of the commenters have interpreted this phrase as requiring unlimited services to these students, in some cases without regard to which specific services are allowable under the Act, the types of services that an eligible recipient must provide to members of special populations with funds awarded under Title II, Part C of the Act in addition to supplementary services are described in section 118(c) of the Act, which is implemented by §403.190(b). However, the Secretary wishes to emphasize that an eligible recipient may use State and local funds to provide the services to members of special populations required by full participation under §403.111(a)(2)(i) and §403.190(b) or to provide additional services if the State or eligible recipient determines those services are needed.

Changes: The Secretary has clarified that the reference to "other services" in §403.111(a)(2)(i), is to the services other than supplementary services that an eligible recipient is required to provide under §403.190(b).

Comments: One commenter recommended that "full participation" be clarified to mean "equitable participation" plus "supplementary services."

Discussion: The Secretary believes that the requirement for "full participation" is distinct from that for "equitable participation" under the Act. Section 403.111(a)(2)(i) interprets "full participation" to require the provision of supplementary services and other services required by §403.190(b) necessary for those members of special populations already enrolled in vocational education to succeed. As discussed with respect to comments on the requirement to provide equitable participation, §403.111(c)(3) has been modified to clarify that providing for the "equitable participation" of members of special populations means giving those students an opportunity to enter vocational education that is equal to that given to general population students. In instances where a particular service would be necessary for a special populations member to enter vocational education, such as an alternative application form or a translator who speaks the student's language, an eligible recipient must provide the service pursuant to the requirement to provide equitable participation. See the illustrations of providing equitable participation under §403.111(c)(3) in Appendix A to Part 403.

Changes: None.

Comments: One commenter suggested that one example of a way of providing for "full participation" is the development, implementation, and use of a so-called "individualized vocational education plan" (IVEP), which would provide the basis for a student's recruitment and placement into a vocational education program.

Discussion: While an IVEP, such as those currently used by some States, is one way of making a determination as to which specific services an individual student may need to succeed in vocational education, this is not the only method. The Secretary believes that States and eligible entities must have the flexibility to work together in developing the most appropriate methods of ensuring the success of their students.

Changes: None.

Comments: One commenter asked for guidelines on how LEAs and postsecondary institutions must provide for the full participation of individuals in correctional institutions, who are one category of special populations, as that term is defined in §400.4(b). The commenter questioned whether an LEA, for example, is required to provide services to individuals in a correctional institution located within the LEA's boundaries.

Discussion: The requirement to provide full participation under §403.111(a)(2) applies only to special populations students already enrolled in an eligible recipient's projects assisted under §§403.112, 403.113, or 403.116. An eligible recipient whose enrollment includes individuals who are in correctional institutions must provide for the full participation of those students. However, the question of whether individuals in correctional institutions may enroll in the programs of a particular eligible recipient is an issue outside of the scope of the Act and, generally, must be decided as a matter of Federal, State, or local penal law.

Changes: None.

Serving a limited number of sites or program areas (§403.111(a)(2)(ii))

Comments: Some commenters opposed the requirement in §403.111(a)(2)(ii) that eligible recipients use funds awarded under Title II, Part C of the Act to assist projects that operate at a limited number of sites or with respect to a limited number of program areas. These commenters believed that this restriction is inconsistent with the intent of the Act to increase the participation of special populations in the full range of vocational education programs and services, and is confusing because the Act also requires that priority be given to the sites and program areas with the highest concentrations of special populations. The commenters recommended that this restriction be deleted from §403.111(a)(2). Another commenter felt that §403.111(a)(2) implied that, with respect to rural districts, the number of programs offered should be limited and should not include the total range of programs traditionally considered to be offered in a comprehensive vocational education program.

Discussion: Section 403.111(a)(2)(ii) implements the requirement of section 235 of the Act that funds awarded under Title II, Part C of the Act be used at a limited number of sites or in a limited number of program areas. For example, as suggested by one commenter, on its face section 235 of the Act would prohibit a rural district with only one site from assisting each program area in which vocational education is offered with funds awarded under §403.112, 403.113, or 403.116. The Secretary does not agree that this requirement is inconsistent with the requirement to give priority to sites or program areas with the highest concentrations of members of special populations. Together these requirements will concentrate funds awarded under Title II, Part C of the Act in the sites or program areas serving members of special populations.

Changes: None.

Serving general population students (§403.111(a)(3))

Comments: Some commenters supported the requirement of §403.111(a)(3) to provide supplementary services to special populations before serving the general student population with funds under the Act. Another commenter objected to allowing services to general population students only after supplementary services are provided to special populations students because it would be impossible to serve the general student population. Another commenter questioned in what specific circumstances funds could be used to improve the entire vocational education effort.

Some commenters believed that

§403.111(a)(3) should be amended to include §§403.32(a)(18)-(26) and 403.190(d) in the list of requirements to serve members of special populations that an eligible recipient must meet before funds awarded under §§430.112, 403.113, and 403.116 may be used to serve students who are not members of special populations.

Discussion: While the Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations, section 235(a) of the Act imposes a requirement to give priority for funding under Title II, Part C of the Act to sites or program areas with the highest concentrations of members of special populations. Accordingly, the provisions of both §§403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. However, the Secretary believes that, once an eligible recipient makes an assurance that it will serve members of special populations, an eligible recipient may serve the general student population at the same time with funds awarded under the Act. Furthermore, §403.190(d) imposes the requirement, as a threshold for an eligible recipient to qualify for funding under the Act, that an recipient provide information in its application for funding, as the State board requires, to demonstrate its compliance with the requirements in §403.32(a)(19)-(26). Consequently, it is not necessary to reference these requirements again in §403.111(a)(3) as suggested by some commenters.

Changes: None.

Giving priority to sites or program areas that serve the highest concentrations of members of special populations (§403.111(b))

Comments: Numerous commenters supported the examples in §403.111(b) of how an eligible recipient can give priority for assistance to sites or program areas that serve the highest concentrations of members of special populations because they provide flexibility. These commenters believed that Example 3 to §403.111(b) allows an eligible recipient to fund program areas that have the greatest job demand and opportunities for employment even at sites that do not have the highest concentrations of members of special populations as a means of improving special populations participation in vocational education in program areas in which special populations are underrepresented. According to the commenters, this would result in more and better vocational education for students who were previously not served by making the priority serving high concentrations of members of special populations in program areas where economically viable employment possibilities exist. One commenter argued that, without such an approach, funding would be funneled into programs that have traditionally had high special populations enrollment.

Other commenters believed that the examples in §403.111(b) imply that both sites and program areas must be prioritized and that either revisions should be made in §403.111(b) or the examples should be deleted. Many other commenters thought that the use of a funding cut-off point in the examples was unnecessary and confusing and suggested adding different and more specific examples.

Other commenters believed that the use of a cut-off point suggested that the requirement was to fund sites or program areas with higher than average concentrations of members of special populations—not the highest concentrations. These commenters argued that "sites or program areas" must be read as a single term to capture the highest concentrations of members of special populations and that the cut-off point for funding would occur when the funds would be spread too thin to provide programs of sufficient size, scope, and quality to be effective.

Another commenter objected to Example 3 because the commenter believed the example allows funds to go to sites or program areas that do not have the highest concentration of members of special populations. Other commenters believed that Example 3 must be tightened up to avoid abuses. Still other commenters interpreted Example 3 as not requiring that the site or program area funded have the highest concentrations of members of special populations and supported the example for this reason.

Discussion: An eligible recipient must give priority either to sites or to program areas that serve the highest concentrations of special populations students — but need not give priority to both. The Secretary does not agree that Example 3 in §403.111(b) would allow an eligible recipient to disregard the requirement to fund either a site or a program area that has the highest concentrations of members of special populations, although the caption of Example 3 is somewhat misleading, or that Example 3 is subject to other abuse. Under Example 3, which was added to §403.111(b) as a result of the negotiated rulemaking, an eligible recipient would first choose a site from among those sites that have the highest concentrations of special populations students. Then the eligible recipient would fund, at that site, a program area in which members of special populations have been previously underenrolled. Thus, as illustrated by Example 3, while an eligible recipient could fund a program area in which members of special populations have been underrepresented, it would have to do so at a site chosen from among those with the highest concentrations of members of special populations. As explained in the preamble to the NPRM, the intent of Example 3 is to provide new and better opportunities in vocational education for members of special populations.

The Secretary does not agree that the use of a funding cut-off point in the examples is confusing, nor does the Secretary agree that the three examples do not provide sufficient guidance as to how an eligible recipient may give priority in funding. In this respect, the Secretary notes that none of the commenters suggested alternative or additional examples that could be added to the regulations.

Changes: The caption for Example 3 in §403.111(b) is changed to clarify that it is an example of one method of giving priority to a limited number of sites with high concentrations of members of special populations—not of giving priority to limited program areas.

Comments: Some commenters thought that actual numbers of special populations students rather than percentages should be used to determine the sites or program areas that have the highest concentrations of special populations pursuant to the requirements of §403.111(b) because basing this determination on percentages, as the examples in §403.111(b) do, would favor small schools and result in serving fewer students. Some commenters wanted an additional example added to §403.111(b) to illustrate the use of actual numbers of students instead of percentages.

Discussion: The Secretary agrees that high concentrations of special populations students could be determined based on either actual numbers, percentages, or a combination of both. Section 403.111(b) provides only examples of ways in which an eligible recipient gives priority to sites or program areas, and does not prevent the use of actual numbers of students either alone or in combination with percentages.

Changes: A note is added after the three examples in §403.111(b) to clarify that actual counts of special populations students may be used alone or in combination with percentages to determine the sites or program areas with the highest concentrations of members of special populations.

Comments: Numerous commenters did not believe that the requirement of §403.111(b) to give priority to the sites or program areas serving the highest concentrations of members of special populations should apply in all cases. One commenter argued that, in a State that has over 50 percent special populations enrollment in vocational education, eligible recipients should not have to prioritize their use of funds under §403.111(b) because the intent of the Act would be met by any use of funds. Other commenters believed that an eligible recipient with a large program with high numbers of special needs students should not be constrained in any way in giving priority for the use of funds. One commenter suggested that the regulations provide for a waiver of the requirement to give priority tied to a set percentage rate for special populations so that an eligible recipient whose participation rate for members of special populations exceeded the standard would have greater flexibility in the use of funds. Another commenter believed that an eligible recipient should have the flexibility to provide a proportionate share of funding to serve members of special populations in "low concentration" sites or program areas.

Discussion: The Secretary does not agree that the intent of the Act would be met by an eligible recipient that failed to give priority in the use of funds to sites or program areas with the highest concentrations of members of special populations. Not only does section 235(b) of the Act clearly require an eligible recipient under Title II, Part C of the Act to give this priority, but also section 235(a) of the Act requires an eligible recipient to use funds awarded under the secondary, postsecondary, and adult vocational education programs (Title II, Part C of the Act) only at a limited number of sites or with respect to a limited number of program areas. Therefore, an eligible recipient must give priority to sites or program areas with highest concentrations of members of special populations in determining which particular sites or program areas to fund.

Changes: None.

Comments: One commenter questioned whether §403.111(b) would allow an eligible recipient to fund sites and program areas that fall below the cut-off point in the examples if the needs of special populations are being met. Another commenter recommended that once priority is given to sites with high concentrations of members of special populations, any remaining funds could be used to fund additional sites or program areas.

Discussion: While §403.111(b) requires that sites or program areas with the highest concentrations of members of special populations receive only a priority and not an absolute or exclusive preference for funding, §403.111(a)(2)(ii) requires that the projects funded under Title II, Part C of the Act be operated at only a limited number of sites or with respect to a limited number of program areas. Therefore, while an eligible recipient could fund sites or program areas below a cut-off point, it could not fund all sites or program areas with funds awarded under Title II, Part C of the Act.

Changes: None.

Size, scope, and quality of vocational education programs assisted with funds awarded under Title II, Part C of the Act (§403.111(c)(1))

Comments: One commenter requested that a definition of the term "size, scope, and quality" be added to §403.111(c)(1). According to the commenter, defining this term would ensure that all States work with the same criteria to achieve accountability.

Discussion: The Secretary believes that §403.111(c)(1) is clear that programs must be of sufficient size, scope, and quality to be effective. (Similarly, §403.62 requires that projects be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.) Moreover, section 115 of the Act clearly envisions that each State will develop its own standards and measures to ensure accountability for the use of vocational education funds in programs within the State.

Changes: None.

Integration of academic and vocational education in programs assisted with funds awarded under Title II, Part C of the Act (§403.111(c)(2))

Comments: Some commenters believed that a State should have the discretion to define the phrase "the integration of academic and vocational education," which is used in §403.111(c)(2). Other commenters requested additional clarification of the terms in the phrase "integration of academic and vocational education" and requested that the interrelationship of this requirement to other requirements in the Act be discussed.

Discussion: The Secretary believes that the meaning of the phrase "integration of academic and vocational education" is clear from its context in §403.111(c)(3), which requires that students achieve both academic and occupational competencies through a coherent sequence of courses. For instance, this requirement would prevent an eligible recipient from using funds awarded under Title II, Part C of the Act to pay the cost of academic courses that were not directly related to the occupational skills being taught in a vocational education program.

Changes: None.

Providing equitable participation (§403.111(c)(3))

Comments: Numerous commenters recommended that the Secretary clarify the requirement for eligible recipients to use funds awarded under Title II, Part C of the Act in programs that provide for the equitable participation of members of special populations. Many commenters recommended adding to §403.111(c)(3) the definition of "equitable participation" that was deleted from the draft regulation during the negotiated rulemaking. Two other commenters believed that the language of §403.111(c)(3) was adequate and should be retained without modification.

Some commenters believed that §403.111(c)(3) should emphasize that the requirement to provide equitable participation means providing the services needed to succeed in high quality programs in an integrated setting in order to avoid tracking of, or watering down of curriculum for, special populations students. These commenters asked that §403.111(c)(3) clarify that the requirement to provide equitable participation applies across the entire spectrum of each special population. The commenters were concerned that only the easiest to serve within each population would be served in the absence of clarification. These commenters also requested that the term "equitable participation" be clarified in terms of the requirements of sections 113, 117, 118, and 240 of the Act related to special populations, which the commenters believed to be mutually reinforcing.

Discussion: The Secretary agrees that more clarification of the requirement to provide "equitable participation" is needed than is provided by the examples in Appendix A to Part 403. As indicated in response to comments on §403.32(a)(18)-(26), the Act does not create individual entitlements to particular services. Rather, the Secretary interprets the requirement in section 235(c)(1)(C) of the Act to provide equitable participation to members of special populations to require giving those students an opportunity to enter vocational education that is equal to that given to general population students. This interpretation is similar to the one included in the draft regulations submitted to negotiated rulemaking, but it clarifies the distinction in the Act concerning the requirement to provide an opportunity to members of special populations to enter a vocational education program as opposed to the requirement to provide the services necessary to enable members of special populations to participate fully and successfully in a vocational program. See the comment and discussion on providing full participation (§403.111(a)(2)(i)).

While sections 113, 117, 118, and 240 of the Act impose requirements that complement the requirement to provide equitable participation, the Secretary believes that these requirements are separate and distinct and that further clarification of the manner in which these requirements complement the equitable participation requirement is not needed.

Changes: Section 403.111(c)(3) has been changed to clarify that "equitable participation" means providing members of special populations with an opportunity to enter vocational education that is equal to that afforded to the general student population.

Comments: One commenter requested a definition of "access" as that term is used in §403.111 and other sections implementing section 235 of the Act.

Discussion: None of the statutory or regulatory provisions cited by the commenter use the term "access."

However, a State is required to make assurances that it will provide equal access to the entire vocational education program within the State under §403.32(a)(18) and (19). These requirements are discussed in response to comments on §403.32(a)(18) and (19).

Changes: None.

Allocation of funds under the Secondary School Vocational Education Program to local educational agencies (§403.112(d))

Comments: Several commenters objected to the requirement in §403.113(d)(2)(ii) that a consortium arrangement under §403.112(d)(2)(i) must serve primarily as a structure for operating joint projects that provide services to all participating LEAs. Some commenters argued that the requirement is too restrictive in that a consortium in a rural, sparsely populated area could not always operate joint projects under which all members receive services. These commenters, therefore, suggested that it would be better to let States decide when a waiver is needed. Other commenters supported §403.112(d)(2) as proposed.

Discussion: The Secretary believes that Congress intended that a consortium be established primarily for undertaking joint projects serving all members. If a consortium were established simply to make subgrants to participating members to operate separate projects, then the consortium would serve no purpose that could not be achieved by direct awards from the State to these LEAs.

If an LEA is located in a rural, sparsely populated area and can demonstrate to the State that it cannot participate in a consortium operating joint projects, then a State may waive the minimum grant requirement and make a direct grant of less than $15,000 to that LEA under the authority of §403.112(d)(3).

Changes: None.

Comments: One commenter advised that a consortium arrangement established for the purpose of meeting the $15,000 minimum grant amount for LEAs under §403.112(d)(2) should be allowed only if the consortium centers around an area vocational education school.

Discussion: Section 231(b)(1) of the Act allows LEAs to form a consortium for purposes of meeting the minimum grant amount. An area vocational education school is considered to be an LEA if it meets the definition in §400.4(b). In instances in which an area vocational education school is an LEA, it can become a member of a consortium established under section 231(b)(1) of the Act.

However, in the absence of a statutory mandate, the Secretary does not believe it is appropriate to require through regulation that each consortium have as a member an area vocational education school.

Changes: None.

Comments: Several commenters suggested that §403.112(d)(2) be clarified to bar subgrants by the fiscal agent of a consortium to participating LEAs.

Discussion: Section 403.112(d)(2) requires that a consortium arrangement must serve primarily as a structure for operating joint projects that provide services to all participating LEAs and that the projects must meet the size, scope, and quality requirement of §403.111(c)(1). The example following §403.112(d)(2)(iii) illustrates that the fiscal agent of a consortium may not subgrant back to a participating LEA the amount it contributed to the consortium. However, if the conditions of §403.112(d)(2) are met, the fiscal agent of a consortium may make subgrants to the participating LEAs if the subgrants increase the administrative efficiency of a consortium. These subgrants may be for less than $15,000 but the projects assisted must meet the size, scope, and quality requirement of §403.111(c)(1).

Changes: None.

Comments: One commenter suggested that the regulations be changed to clarify that the waiver for LEAs located in rural, sparsely populated areas does not waive the size, scope, and quality requirements of §403.111(c)(1).

Discussion: The Secretary agrees that the waivers for LEAs located in rural, sparsely populated areas does not waive the size, scope and quality requirement of §403.111(c)(1).

Changes: Paragraph (iii) has been added to §403.112(d)(3) to clarify that the waiver of the minimum grant requirement does not waive the size, scope, and quality requirement of §403.111(c)(1).

Eligibility of State corrections agencies for funding under sections 231 and 232 of the Act (§§403.112, 403.113, and 403.116)

Comments: One commenter maintained that the proposed regulations violate the statutory directive to include a State corrections agency in the formula entitlement under sections 231 and 232 of the Act. Another commenter stated that a State corrections agency should not be considered to be an LEA or an eligible institution, and therefore, should not be eligible for funding under sections 231 or 232 of the Act. The commenter suggested that the final regulations should indicate that a State corrections agency is not eligible for an allotment under the secondary or postsecondary formula.

Discussion: A State corrections educational agency or a State or local correctional institution that has administrative control and direction over a vocational education program is included in the definition of "local educational agency" set forth in §400.4(b) and section 521(22) of the Act. Consequently, these agencies or institutions are eligible for an allocation of funds under §§403.112, 403.113, and 403.116, which implement sections 231 and 232 of the Act. However, these agencies or institutions are subject to the same statutory and regulatory requirements (such as the formula and minimum grant amount requirements) as are other eligible recipients. Moreover, if both a State correctional institution and a local correctional institution apply for funding under §403.112, 403.113, or 403.116, care must be exercised to avoid duplicative counting of any student who could be construed to be under the control of both a State and a local correctional institution.

Changes: None.

Allocating funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies (§403.113)

Comments: Two commenters urged that §403.113(a)(1)(i) be changed to permit a State to encourage, but not require, the establishment of a consortium for purposes of the State's making direct allocations of funds to an area vocational education school or an intermediate educational agency that would otherwise have been allocated to an LEA.

Discussion: Neither the regulations nor the Act itself addresses the question of whether a State may require an LEA and an area vocational education school or an intermediate educational agency to form a consortium for purposes of making a direct allocation of funds to the area vocational education school or the intermediate educational agency under §403.113(a). The Act neither prohibits the State from requiring consortia nor specifically authorizes the State to require consortia. The Secretary believes that, because this kind of issue is so inherently related to a State's administration of its program, and because the Act is silent on this issue, the question of whether authority exists to require consortia is a matter to be determined under State and local laws and regulations.

Changes: None.

Comments: One commenter objected to the provisions in §403.113(d) that allow an LEA to retain the amount of its formula allocation not distributed to an area vocational education school or an intermediate educational agency even though that amount is less than $15,000. The commenter believed that this provision is inconsistent with congressional intent that funds be aggregated to meaningful levels. The commenter also suggested that, if the provision were retained, it at least should be amended to require an LEA with a balance of less than $15,000 to join a consortium under §403.112(d)(2).

Discussion: The Secretary believes that the minimum grant amount requirement set forth in section 231(b)(1) of the Act establishes only the eligibility of an LEA to receive an award under the Act. Once an

LEA receives a minimum allocation of $15,000 or more under the statutory allocation formula, the Secretary believes the LEA is entitled to retain and spend its award even though the remainder is less than $15,000 due to a transfer to an area vocational education school or an intermediate educational agency pursuant to section 231(d) of the Act. Moreover, the Secretary believes that the provision for establishing a consortium in section 231(b) of the Act applies only to an LEA that otherwise would be ineligible to receive funds under the Act because its formula allocation is less than $15,000.

Changes: None.

Determining the number of economically disadvantaged students (§403.114)

Comments: One commenter requested that the regulations be revised to allow for the use of student eligibility data under the free or reduced-price lunch program to identify particular economically disadvantaged students at school sites and in vocational education programs.

Discussion: As indicated in a note to the definition of "economically disadvantaged family or individual" in §400.4(b), a State or recipient may use the total number of students participating in a free or reduced-price meals program to determine eligibility of sites for projects, services and activities under the Act. However, the National School Lunch Act prohibits the identification of these students by name. Therefore, that information cannot be used to identify particular economically disadvantaged students.

Changes: None.

Allocation of funds under the Postsecondary and Adult Vocational Education Programs (§403.116)

Comment: One commenter objected to the provisions in §403.116(b), which requires that, under the statutory formula for distributing funds under the Postsecondary and Adult Vocational Education Programs, a State count only Pell Grant recipients and Bureau of Indian Affairs-assisted students enrolled in vocational education as defined in §400.4(b). The commenter argued that Congress did not intend that a State count only students enrolled in a vocational education program.

Discussion: Section 232(a) of the Act requires that, in order to be counted for purposes of distributing funds, Pell grant recipients and recipients of assistance from the Bureau of Indian Affairs must be enrolled in programs meeting the requirements of section 235 of the Act, which necessarily includes satisfying the definition of "vocational education" in §400.4(b). However, in response to the commenter, the Secretary has changed §403.116 to more closely conform to the language of section 232 of the Act to clarify the relationship between the requirements of section 235 of the Act, which are implemented in §403.111, and the definition of "vocational education."

Changes: Section 403.116 is amended to indicate that only students enrolled in programs meeting the requirements of §403.111 are counted under the statutory formula for distributing funds under the Postsecondary and Adult Vocational Education Program.

Comments: Several commenters requested that §403.116(b)(2) be amended to include counts of students assisted under the Tribally Controlled Community Colleges Assistance Act and the Navajo Community College Act.

Discussion: The Secretary does not believe it is appropriate to amend by regulation the unambiguous statutory requirement for fund distribution.

Changes: None.

Comments: One commenter requested that the regulations permit a consortium arrangement among postsecondary institutions for the purpose of meeting the $50,000 minimum grant amount requirement in section 232(c)(1) of the Act. The commenter argued that, since this consortium arrangement is permitted for LEAs for the purpose of meeting the minimum grant amount of $15,000 for those agencies, a parallel arrangement should be established for postsecondary institutions.

Discussion: Section 231(b) of the Act provides authority for an LEA to enter into a consortium arrangement with other LEAs for the purpose of meeting the minimum grant requirement for those agencies. While section 232 of the Act establishes a minimum grant requirement for postsecondary institutions, this section contains no corresponding provision for a consortium arrangement for meeting the minimum grant requirement. The Secretary believes that, if Congress had intended that a consortium arrangement for postsecondary institutions be allowed, a provision corresponding to the consortium arrangement in section 231 of the Act for LEAs would have been included in section 232 of the Act for postsecondary institutions.

Changes: None.

Comment: One commenter asked that the $50,000 minimum grant amount for recipients under the Postsecondary and Adult Vocational Education Program established by section 232(c)(1) of the Act be reduced to $15,000, which is the minimum grant amount established for recipients under the Secondary School Vocational Education Program by section 231(b)(1) of the Act.

Discussion: The Secretary does not agree that it would be appropriate through regulation to change the $50,000 minimum grant requirement imposed under section 232(c)(1) on recipients under the Postsecondary and Adult Vocational Education Programs.

Changes: None.

Alternative distribution formula for the Postsecondary and Adult Vocational Education Programs (§403.118)

Comments: One commenter advocated that §403.118 should be changed to permit the use of two separate postsecondary formulas that recognize the difference in various institutional arrangements found at the postsecondary level. The commenter argued that a single formula will not work equitably given such differences as tuition charges, types of students served, and program offerings in various postsecondary institutional arrangements.

Discussion: The Secretary agrees that the statutory formula established under section 232(a) of the Act cannot always effectively identify economically disadvantaged students attending certain types of postsecondary institutions. In these instances, section 232(b) of the Act provides for a waiver of the statutory formula and permits a State to propose an alternative formula that better identifies the highest numbers of economically disadvantaged students. The Act, however, does not authorize the use of separate formulas for particular types of postsecondary institutions. Rather, the Act specifies that each institution's award must be proportionate to the relative share its enrollment of economically disadvantaged students is to that number enrolled in all eligible institutions.

Changes: None.

Comments: One commenter maintained that only students enrolled in vocational education programs should be counted under an alternative formula allowed under §403.118. The commenter pointed out that to permit counts of non-vocational education students in an alternative formula will drive funds to institutions enrolling few vocational education students at the expense of institutions that have higher numbers of vocational education students who are economically disadvantaged.

Discussion: The Secretary shares the commenter's concern that the use of non-vocational student counts in an alternative formula might lead to substantial allocations to institutions with few vocational education students at the expense of institutions primarily offering vocational education programs. However, section 232(b) of the Act enumerates six examples of alternative criteria for allocating funds to institutions, none of which requires that students counted under the alternative formula be enrolled in a vocational education program. Therefore, the Secretary does not believe it is appropriate to impose this requirement by regulation.

Changes: None.

Comments: Several commenters objected to §403.118(c), which establishes five conditions that must be met by an alternative formula for the distribution of funds for the Postsecondary and Adult Vocational Education Programs. The commenters maintained that the establishment of these conditions would violate the prerogative of a State to develop an alternative formula. However, other commenters agreed that there should be a positive relationship between funding and actual enrollment in institutions.

Discussion: The five conditions that must be met by an alternative formula under §403.118 were established to clarify what the Secretary believes to be the intent of the Act with respect to waiving the statutory funding formula. The Secretary must have uniform standards against which to judge the legal sufficiency of a proposed waiver formula. The Secretary does not believe that the standards (or conditions) in §403.118(c) exceed the intent of the Act, but rather the Secretary believes that they are logically derived from the requirements of §403.118(b).

Changes: None.

Comments: Several commenters objected to the requirement in §403.118(c)(1) that an alternative formula for the distribution of funds for the Postsecondary and Adult Vocational Education Programs be based on direct counts of students enrolled in institutions. The commenters advanced differing rationales for their positions. Some commenters pointed out that direct student counts do not necessarily reflect the needs of the area served by an institution since relatively small numbers of members of special populations attend postsecondary institutions. Other commenters suggested that an alternative formula be based on population data of the area served by an institution.

Discussion: The requirement in §403.118(c)(1) that an alternative formula include direct counts of students enrolled in institutions receiving awards implements section 232(b)(2) of the Act, which requires that alternative criteria be based on "the numbers of individuals attending institutions within the State." Section 232(b)(2) of the Act offers six examples of alternative criteria, all of which are based on direct counts of enrolled students. While other criteria are possible, the Secretary believes that Congress clearly intended that alternative criteria must relate to direct counts of enrolled students.

Changes: None.

Comments: One commenter recommended that a strict scrutiny standard be established in the regulations for granting waivers of the statutory funding formula under the Postsecondary and Adult Vocational Education Programs. The commenter pointed out that in the past States have defined their entire geographic area as economically depressed. The commenter also suggested that great care be used in reviewing the definitions and data sources used in a waiver request.

Discussion: Section 403.118(c) requires that an alternative formula include direct counts of students enrolled in institutions, and that the criteria used in identifying students to be counted directly relate to the students' status as economically disadvantaged. These standards will preclude approval of any proposed alternative formula that distributes funds on any basis other than status as economically disadvantaged. The Department also reviews data submitted with waiver requests for accuracy.

Additionally, section 232(b) of the Act allows the Secretary to waive the statutory allocation formula only in those cases where the State demonstrates that the statutory allocation formula does not result in a distribution of funds to the institutions within the State that have the highest number of economically disadvantaged individuals and that an alternative formula would result in such a distribution.

The Secretary interprets this requirement as meaning that a State must demonstrate that an alternative formula will identify a more accurate count of economically disadvantaged individuals enrolled in institutions than would the statutory formula.

Changes: Paragraph (6) has been added to §403.118(c) to indicate that the Secretary waives §403.116(b)(2) in those cases where an alternative formula identifies a more accurate count of economically disadvantaged individuals enrolled in institutions in the aggregate than does the formula in §403.116(b)(2).

Reallocation of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs (§403.120(a))

Comments: One commenter requested that §403.120(a) be amended to allow recipients of funds under Title II, Part C of the Act up to 18 months to expend those funds before unexpended amounts must be returned to the State for reallocation. The commenter pointed out that a 12-month expenditure period will force many recipients to make obligations based on hasty decisions to avoid returning funds to the State. Another commenter recommended that §403.120 be changed to allow local recipients two years in which to expend funds.

Discussion: Section 403.120(a) establishes the expenditure period for an award as a fiscal or program year. In §400.4(b), "program year" is defined as a 12-month period, while under 34 CFR 77.1(c), "fiscal year" also is defined as a 12-month period. However, because funds under the Act typically become available to the Department for obligation to a State on July 1 of the fiscal year in which funds are appropriated (for use, generally, during the course of the following school year), under section 411 of the General Education Provision Act, and the relevant appropriations act, the Secretary believes that a State may make funds available to an eligible recipient on this same basis under 34 CFR 76.704. Therefore, a State may make funds available to eligible recipients for a period of up to 15 months, depending on when the State itself may begin to obligate funds.

Changes: None.

State assistance for vocational education support programs by community-based organizations (§403.141(b)(3))

Comments: One commenter noted that §403.141(b)(3) requires an applicant for funding under this program to give assurances that it will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages 16 through 21, inclusive. The commenter recommended that the regulations clarify that this assurance for special consideration does not exclude individuals outside the 16- to 21-year-old age range from receiving services under the program.

Discussion: The Secretary agrees that the assurance for special consideration does not exclude individuals outside the 16- to 21-year-old age range from receiving services under the program. However, because the assurance requires that special consideration be given only to certain individuals within a specific age range, the Secretary feels that no additional clarification is necessary in the regulations.

Changes: None.

Business-Labor-Education Partnerships for Training Program (§403.173)

Comments: One commenter suggested that §403.173(a)(2) be amended to clarify that a State may use funds for both basic and advanced academic skills instruction. The commenter noted that there is a need to reflect the Act's emphasis on advanced skills as well as basic skills.

Discussion: The enumeration of allowable expenses in §403.173(a) is not exhaustive. Section 332(d) of the Act requires the Secretary to prescribe policies for projects carried out under this program and to include examples of allowable expenses for business-labor-education partnerships. However, the Secretary agrees that expenditures for advanced academic skills instruction would be allowable expenses under this program to the extent that these costs were incurred in carrying out the projects, services, and activities described in §403.170.

Changes: None.

Reservation of funds under the basic programs (§403.180)

Comments: One commenter suggested that a mathematical example be provided in §403.180 to illustrate how the "hold-harmless" requirement for the Programs for Criminal Offenders should be applied.

Discussion: While the regulations provide examples for reserving funds for administration in §403.180(b)(4) and for implementing the "hold-harmless" requirements for certain programs in §403.180(c), they do not provide a specific example of how to implement the "hold-harmless" requirement for the Programs for Criminal Offenders in §403.180(a)(1)(ii). Because the "hold-harmless" requirement for criminal offenders differs from the other "hold-harmless" requirements with respect to funds counted, the Secretary agrees that a specific example for the Programs for Criminal Offenders would clarify the regulations.

Changes: An Example 3 has been added to follow §403.180(c)(3) to explain how the "hold-harmless" requirement under §403.180(a)(ii) applies to the Programs for Criminal Offenders.

Comments: One commenter objected to the use of the terms "reserved" and "obligated" in §403.180(a)(1)(ii) for establishing the "hold-harmless" level for the Programs for Criminal Offenders. The commenter pointed out that the Act was amended to establish the "hold-harmless" level for this program based on amounts "expended" for the fiscal year 1990.

Another commenter objected to the requirement in §403.180(a)(2)(ii)(A) and (B) that establishes the "hold-harmless" level for the Programs for Criminal Offenders as the amount reserved under section 202(6) of the CDPVEA from its FY 1991 grant plus any other amounts that were obligated for this purpose from its FY 1991 grant. The commenter pointed out that the effect of this interpretation would be to increase the set-aside for the Programs for Criminal Offenders to a level above one percent in some States. The commenter argued that, if this had been congressional intent, Congress would have simply increased the setaside percentage for this program. The commenter requested that §403.180(a)(2)(ii)(B) be deleted.

Discussion: The intent of a so-called "hold-harmless" provision like the one set forth in section 102(c)(2) of the Act is to ensure that funds for a particular purpose do not decrease below a level established in a previous year. Section 102(c)(2) of the Act, as amended by Public Law 102-103, establishes a hold-harmless provision for the Programs for Criminal Offenders. Section 102(a)(5) of the Act requires a State to make available an amount equal to one percent of its allotment under section 3(a) of the Act for Programs for Criminal Offenders. The hold-harmless requirement contained in section 102(c)(1) of the Act, as originally enacted, required a State to reserve for the Programs for Criminal Offenders an amount that "is not less than the amount reserved for [this] program in FY 1990," which was also one percent. However, Public Law 102-103 amended this requirement. Section 102(c)(2) of the Act, as amended, requires a State to reserve for the Programs for Criminal Offenders not less than the amount that the "State expended under this Act for such program in the Fiscal Year 1990." In a case where Congress directs that "not less than" a particular amount be made available for a purpose, it clearly intends that the hold-harmless rule will increase the amount that otherwise would be available by establishing a floor.

Funds from the Federal appropriation for Fiscal Year 1990 are available to a State beginning July 1, 1991, until September 30, 1992. Therefore, interpreting section 102(b)(2) of the Act to require a State to reserve only that amount of the one percent reserve from FY 1990 funds for the Programs for Criminal Offenders expended prior to that time could require it to reserve considerably less than the one percent required to be reserved under section 102(a)(5) of the Act and, given the prorated reduction made if a State's allotment for Title II of the Act is less than in FY 1990, it could never be more than the amount reserved under section 102(a)(5) of the Act. Thus, to fulfill the clear congressional intent of the hold-harmless requirement, that is, that in some instances the amount reserved for Programs for Criminal Offenders be increased above the amount that is required to be reserved under section 102(a)(5) of the Act, the Secretary has interpreted the hold-harmless provision in section 102(c)(2) of the Act to include the one percent amount required to be reserved from the FY 1990 appropriation, plus any additional amount obligated from other reserves for projects, services, and activities for criminal offenders in correctional institutions from the FY 1990 appropriation. The term "obligated" is used rather than "expended" consistent with the long standing Departmental practice of interpreting "expenditure" to mean "obligation" as defined in 34 CFR 76.707.

Changes: None.

Comments: One commenter suggested that §403.180(b)(3) be revised to require that the reserve for State Programs and State Leadership Activities must be eight and one-half percent as opposed to "not more than" eight and one-half percent as the regulations specify. The commenter believed that the programmatic change called for in the Act will not occur successfully without the assistance of the full setaside for State Programs and State Leadership Activities.

Discussion: The requirement in §403.180(b)(3) that the reserve for State Programs and State Leadership Activities be not more than eight and one-half percent is based on the language in section 102(a)(3) of the Act, which requires that the setaside be an amount equal to not more than eight and one-half percent of a State's allotment. If Congress had intended that a State be required to reserve a full eight and one-half percent for this program, then the Act would have so stated.

Changes: None.

Maintenance of fiscal effort (§403.182)

Comments: A commenter noted that §403.182 does not address the maintenance of effort requirement, but rather indicates the Secretary's responsibilities if maintenance of fiscal effort does not occur. The commenter also noted that the option of proportionately reduced allocations should be included in the regulations.

Discussion: Section 502(a) of the Act, as implemented in §403.182, makes maintenance of fiscal effort a clear condition of a State's eligibility to receive a grant and does not provide for a proportional reduction in the grant award, as some Federal education statutes do. To allow the Secretary to implement the maintenance of effort requirement and still make grant awards on a timely basis, §403.32(a)(1) requires a State to include in its State plan an assurance that it will comply with all the requirements of the Act and regulations, including the maintenance of effort requirement. If, after a State receives a grant, it becomes clear that the State did not maintain effort in accordance with its assurance, then that State would be required to return the full amount of the grant awarded under the State plan.

Changes: None.

Administrative cost requirements (§403.186)

Comments: Most commenters expressed support for §403.186. However, a few commenters asked on what authority the Secretary (in §403.186(b)(2)) can authorize a State to use funds reserved from its allotment for the State Assistance for Vocational Support Programs by Community-Based Organizations to administer that program.

Discussion: The Secretary believes that the authority to use funds under this program for administrative costs is contained in the "necessary and reasonable" cost principle, which is implicit in the statute and is consistent with government-wide cost principles (see Office of Management Budget Circular No. A-87). Additionally, it is the historic practice of this Department to allow a State to use program funds for necessary and reasonable administrative costs if the Act provides for no specific setaside for this purpose, but does not prohibit or otherwise limit the use of funds for administrative costs.

Changes: None.

Local application requirements (§403.190(a)(1)(i))

Comments: Some commenters requested that §403.190(a) be amended to require that an eligible recipient describe in its application: (1) how its uses of funds will reflect the needs identified under

§403.32(b)(1); (2) how members of special populations and their parents will be involved in the process of assessing their needs and identifying the services to meet those needs; (3) how access to programs of good quality will be provided to students who are educationally disadvantaged in addition to the populations listed in section 240(4) of the Act; and (4) the numbers of individuals in each special population by program area and, for students with disabilities, by individual disability.

Discussion: Section 240 of the Act gives the State board the authority to determine the requirements of local applications in addition to those specifically imposed by the Act. Accordingly, the Secretary does not wish to impose any further requirements beyond those specified in the Act, although a State board could impose these requirements if it identifies them in accordance with §400.9(c).

Changes: None.

Comments: Some commenters objected to the requirement in §403.190(a)(1)(i)(B) that an eligible recipient include in its application a description of how it will use funds awarded under §403.112, 403.113, or 403.116 and funds from other sources to improve the program with regard to each requirement and activity described in §403.111(c) and (d). The commenters argued that the effect of this provision would be to reimpose the matching requirement that the Act removed.

Discussion: Section 240(1) of the Act expressly requires that an application for funding under Title II, Part C of the Act include a description of how the applicant will use the funds available under Title II, Part C of the Act and "from other resources" to improve the program with regard to each use of funds described in section 235 of the Act. However, the Secretary does not agree that this requirement in effect reimposes a matching requirement at the local level. Neither section 240(1) of the Act nor §403.190(a)(1)(i)(B) imposes a requirement that an eligible recipient spend any particular amount of funds; rather, these provisions require an applicant only to describe the funding, from whatever resources, that will be devoted to program improvement.

Changes: None.

Access for economically disadvantaged individuals (§403.190(a)(1)(iii))

Comments: One commenter supported the requirement in §403.190(a)(1)(iii) to provide access to high quality programs for economically disadvantaged students, students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts—not by simply making special populations aware of available vocational education programs.

Discussion: Section 240(a)(4) of the Act clearly requires both affirmative outreach and recruitment efforts with respect to the listed groups of students in addition to the information provision requirements contained in section 118(b) of the Act.

Changes: None.

Use of funds for supportive services (§403.190(a)(2)(ii)(B))

Comments: One commenter supported the provisions in §403.190(a)(2)(ii)(B), which the commenter believed permitted the use of funds for child care and other necessary supportive services to assist students to succeed. Another commenter argued that child care should be allowable under §403.111(d) if it is conducted on a group basis and involves instruction in child care. Another commenter suggested that, since child care is costly, a State could set State-imposed requirements that would be reasonable and effective, thereby allowing access for special populations and flexibility for eligible recipients. One commenter was uncertain whether child care is an allowable expenditure under Title II, Part C of the Act. This commenter also questioned whether tuition or transportation would be allowable and requested a definition of "special aid."

Discussion: Section 240(12)(B) of the Act, which is implemented in §403.190(a)(2)(ii)(B), requires an eligible recipient to include in its application for funding an assurance that it will provide a vocational program that assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services, such as counseling, English-language instruction, child care, and special aids. While these supportive services are not expressly included in section 235(c)(2) of the Act as examples of activities that may be conducted with funds awarded under Title II, Part C of the Act, the Secretary does not believe that Congress intended to require these services for the populations named without authorizing the use of funds awarded under Title II, Part C of the Act to pay the cost of providing these supportive services. Thus, the Secretary considers the types of supportive services for the particular populations listed in §403.190(a)(2)(ii)(B) to be allowed costs under Title II, Part C of the Act. However, the Secretary believes that the examples of supportive services that are included in §403.190(a)(2)(ii)(B) provide sufficient guidance to an eligible recipient as to the types of special aids that would be allowable for these populations and that it is most appropriate for an eligible recipient to determine which supportive services and special aids will best allow its students to succeed. Services that are similar in intent and cost to counseling, English-language instruction, and child care are allowable costs as special aids. For example, transportation could be provided to economically disadvantaged students for the same reason and for about the same or a lesser cost as child care.

Changes: None.

Local application assurances — Special populations (§403.190(b))

Comments: The Secretary received many comments on §403.190(b), which would require an eligible recipient that desires financial assistance under Title II of the Act to make the assurances required by section 118(c) of the Act to provide certain services and activities for members of special populations with respect to any project that is funded under Title II or Title III of the Act. Some commenters were confused as to whether §403.190(b) would apply the requirements of section 118(c) of the Act to any vocational project and supported limiting the requirements of §403.190(b) to an eligible recipient's projects receiving funds under Title II or Title III of the Act.

Some commenters strongly opposed applying the requirements of §403.190(b) to funds awarded under Title III of the Act. Many of these commenters thought that the programs in Title III of the Act made sufficient provisions for services to members of special populations and that they should not be subject to the requirements of §403.190(b). For example, Title III, Part B of the Act requires that not less than one-third of the funds under that part must be used in economically depressed areas or areas with high rates of unemployment to help improve the home environment and quality of family life. Another commenter argued that, if all Federal funds were devoted to providing equal access and supplementary services to members of special populations instead of overall improvement in vocational education programs, members of special populations would be given access to separate and inferior education.

Many commenters believed that proposed §403.190(b) would require eligible recipients under Title II of the Act to provide equal access and supplementary services to all members of special populations enrolled, or planning to enroll, in vocational education. These commenters strongly objected and questioned whether this requirement would be consistent with section 118 of the Act, would subject recipients to legal and audit exposure even if the special populations students in all projects assisted under the Act received supplementary services, or would ever permit recipients to serve general population students with funds awarded under the Act.

Other commenters believed that the assurances should apply to an eligible recipient's entire vocational education program because an eligible recipient is required to give members of special populations equal access to the full range of vocational education programs available to individuals who are not members of special populations under section 118(a) of the Act. Some commenters supported requiring recipients of funds under Title III of the Act—especially under the Tech-Prep Education Program—to make the same assurances as recipients under Title II of the Act. Still other recipients expressed confusion as to whether, and under what circumstances, eligible recipients had to provide services to students in projects funded under Title III of the Act.

Discussion: The local assurances to provide services to special populations students are applicable to any project funded under the State plan — whether the project is assisted with funds awarded under Title II or Title III of the Act. While section 118(c) of the Act is clear that only recipients of funds awarded under Title II of the Act are required to make the assurances related to members of special populations, section 118 of the Act is more broadly worded as to which special populations students must be served. Both the broad language of section 118(c) of the Act and the placement of the provisions in Title I of the Act which relates to State plan and other general requirements—rather than within Title II, Part C of the Act—support a broader interpretation of the scope of these assurances. The scope of this requirement is consistent with the revisions to the scope of the local evaluation required under §403.191(a), which only requires recipients to evaluate the particular projects, services, and activities assisted under the State plan, unless the State board determines that a broader evaluation is necessary to be effective. See the discussion in response to comments on §403.191, which implements the local evaluation requirement.

Both the basic programs under Title II of the Act, which are listed in §403.60, and the so-called "special programs" under Title III of the Act, which are listed in §403.130, are subject to the requirements of the State plan. However, the Secretary is modifying proposed §403.130 to delete the Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities (Supplementary State Grants Program) from the list of special programs because Title III, Part F of the Act, which authorizes the Supplementary State Grants Program, does not require that funds awarded under that part be used in accordance with the State plan, as is required for the other programs listed in §403.130. Similarly, the State-Administered Tech-Prep Education Program, which is authorized by Title III, Part E of the Act, also is not listed in §403.130 as a special program because the Act does not require a State to conduct the program in accordance with the State plan.

Changes: Section 403.190(b) has been changed to clarify that the assurances to provide services to members of special populations apply only to an eligible recipient's projects that are assisted with grant funds awarded under the basic and special programs—not to every project assisted under Title III of the Act. Section 403.130 has been changed to remove the Supplementary State Grants Program from the list of special programs, that are subject to the requirements of the State plan. Conforming changes also have been made to §§403.32(d), 403.131(c), 403.187(b), 407.10(a), 407.22(b) and (c), and 407.31.

Comments: One commenter noted that the assurances required of an eligible recipient under §403.190(b) apply only to projects assisted under the Act while the assurances required in the State plan under §403.32(a)(18)-(26) apply to the entire vocational education program in a State—including local programs. This commenter requested that an eligible recipient's obligations be clarified.

Discussion: The State assurances in §403.32(a)(18) and (19) require a State to ensure that members of special populations are given equal access to vocational programs within the State. Because the Secretary interprets these assurances as applying to a State's entire vocational education program, eligible recipients also are required to provide equal access to their vocational education programs. See the discussion in response to a comment on the scope of the §403.32 assurances. However, the State assurances required under §403.32(a)(20)-(26) relate to a State's responsibility to monitor and administer the Act consistently with requirements imposed by other statutes, for example, the IDEA, and reinforce an eligible recipient's responsibilities under those other statutes. Section 403.190(d) requires an eligible recipient to provide sufficient information to the State, as the State board requires, to demonstrate that the eligible recipient is in compliance with §403.32(a)(18)-(26).

Changes: None.

Comments: Some commenters were concerned that, if the requirement in §403.190(b) to provide supplementary services to special populations students, and the corresponding financial obligation, were interpreted broadly, there would not be any Federal vocational education funds available to serve general population students.

Discussion: The Act does not create an individual or unlimited entitlement for members of special populations, but it does impose a requirement to give priority to the sites or program areas with the highest concentrations of members of special populations and to provide the services and activities described in §403.190(b) to members of special populations. However, as discussed in response to a comment on §403.111(a)(3), the Secretary believes that, once an eligible recipient assures that members of special populations will be served, an eligible recipient may serve the general student population with funds awarded under the Act.

Changes: None.

Comments: One commenter believed that §403.190 is unclear because it suggests that funds awarded under the Act might be used for assistance for special populations in other, non-vocational related aspects of schooling. The commenter argued that this would deplete funds for vocational education for all students.

Discussion: The Secretary does not agree that §403.190 is unclear concerning the use of funds for vocational activities. On the contrary, §403.190(b) specifically ties the use of funds for supplementary services to those specific projects that are funded under basic or special programs authorized by Title II or Title III of the Act, respectively.

Changes: None.

Comments: One commenter believed that §403.190(b)(1) erroneously refers to section 626 of the IDEA and requested that the reference be changed to section 602(a)(19) and (20) (20 U.S.C. 1401(a)(19) and (20)), which provides the definition of "transition services" and the required contents of the IEP, respectively. According to the commenter, section 626 of the IDEA authorizes discretionary grants to States for Statewide planning for the development and improvement of transition services for students with disabilities.

Discussion: Section 403.190(b)(1) accurately reflects section 118(c)(1), which incorporates by reference section 626 of the IDEA — not section 602(a)(19) and (20).

Changes: None.

Comments: Several commenters requested that §403.190(b)(2) interpret the requirement that an eligible recipient assess a student's special needs. Some of these commenters also requested that the regulations clarify that the definition of "supplementary services," which lists specific services, provides only examples of minimum services that must be provided and that §403.190(b)(3) requires that the actual services provided be based on current, valid, and relevant vocational assessment information such as that in an IEP. Some commenters recommended that this include an assessment of their interest and abilities. Some of these commenters recommended that the Secretary require a range of vocational assessment services to be made available to students, and that the specific services to be provided be included in the student's IEP or, in the case of members of special populations who are not in special education, in an individualized vocational education plan.

Discussion: The Secretary believes that States and their eligible recipients should have the flexibility to determine together what assessment of special needs will best serve their students, and, therefore, no specific definition is added to the regulations. However, the Secretary does not agree that the list of services included in the definition of "supplementary services" in section 521(38) of the Act is intended to provide only examples. The language of this statutory provision on its face clearly indicates that the list of services is exhaustive. Nor does the Secretary agree that it would be appropriate to impose further requirements to provide supplementary services beyond those imposed by the Act or other Federal laws, such as the IDEA.

Changes: None.

Comments: Some commenters requested that the assurances required by §403.190(b)(2) and (3) be amended to require the active involvement of members of special populations and their parents in identifying the special needs of these students and the supplementary services to be provided.

Discussion: The assurances required by §403.190(b)(2) and (3) accurately reflect the language of section 118(c)(2) and (3) of the Act. The requirement for participatory planning imposed by section 118(d) of the Act and referred to by the commenters is implemented in §403.205.

Changes: None.

Funding for supplementary services (§403.190(c))

Comments: Some commenters objected to §403.190(c) because it does not require eligible recipients to spend non-Federal funds to provide the services and activities described in §403.190(b) to members of special populations. The commenters noted that, if §403.190(c) required that eligible recipients provide members of special populations with the services and activities described in §403.190(b) only to the extent possible with funds awarded under the Act, it would have the effect of limiting local services that are necessary for these students to succeed in vocational education. The commenters recommended that the words "to the extent possible with funds awarded under the Act" be deleted. Some commenters recommended deleting §403.190(c) entirely because they argued that the assurances in §403.190(b) are threshold, programmatic requirements that an eligible recipient must meet—without regard to source of funding—to be eligible for funding under the Act. One commenter recommended amending §403.190(c) to clarify that, although eligible recipients are not required to use State and local funds to provide the services described in §403.190(b) to members of special populations, they may do so.

Other commenters requested that §403.190(c) be deleted because it implies that an eligible recipient must use non-Federal funds to provide the services required by §403.190(b), which is inconsistent with §403.193(e), or must exhaust its Federal funds providing services for members of special populations. Another commenter argued that §403.190(c), in effect, reimposes the local matching requirement that was removed by the Act. The commenter argued that requiring financial information would not assist either eligible recipients or a State in achieving the intended purposes of the Act. Another commenter objected to the requirement that an eligible recipient indicate in its local application whether any non-Federal funds will be used to provide the services and activities described in §403.190(b). This commenter felt that, because the first local applications under the Act have been submitted to the States without including this information, this requirement would be burdensome.

A different commenter argued that, since statewide maintenance of effort is required by the Act, §403.190(c) is unnecessary and should be deleted. Another commenter recommended that the regulations clarify that, when an eligible recipient must provide services under §403.190(b) to members of special populations in projects funded under Title III of the Act, the eligible recipient is required to use only funds awarded under Title II of the Act — not funds awarded under both Title II and Title III of the Act.

Discussion: The Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. Accordingly, the provisions of both §§403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. The circumstances under which an eligible recipient may serve general population students are discussed in response to comments on §403.111(a)(3). However, the Secretary believes that funds awarded under Title II, Part C of the Act and funds awarded under the special programs authorized by Title III of the Act also are available for this purpose so long as the specific services provided are allowable costs under the particular special program for which the funds were awarded.

The purpose of requiring that an eligible recipient indicate in its application for funding whether non-Federal funds will be used to provide the services in §403.190(b) is not related to the maintenance of effort requirement, which applies only to State—not local—expenditures for vocational education, nor does it impose a local matching requirement. Rather, the Secretary intends to highlight in §403.190(c) that an eligible recipient may use State and local funds to provide the services described in §403.190(b) to members of special populations—even though it may not be required. The Secretary also believes that a State must have the information required by §403.190(c) to enable it to meet its overall responsibilities to members of special populations under section 118(a) of the Act. After the final regulations become effective, a State may allow its eligible recipients merely to amend the applications already filed without imposing additional, undue burdens.

Changes: None.

Assessment and planning for special populations (§403.190(e)(2))

Comments: Some commenters recommended that the word "economically" be deleted from §403.190(e)(2)(i) and (ii) because they believed that Congress intended an eligible recipient to report on the numbers of all disadvantaged students—not just economically disadvantaged students. These commenters also recommended that §403.190(e)(i) be amended to require that the numbers for each special population be presented by occupational program area, and for disabled students, by type of disability.

Discussion: The requirements of §403.190(e)(2)(i) and (ii) accurately reflect the language of section 111(d) and (e) of the Act. However, a State may impose additional requirements if it identifies them in accordance with §400.9(c).

Changes: None.

Local evaluation — Burden of implementation (§403.191(a)(1))

Comments: Numerous commenters expressed the view that the requirement in §403.191(a)(1) that a recipient must evaluate annually its entire vocational education program, without regard to the particular projects supported with funds awarded under the Act, imposes a burden on recipients. Some of these commenters believed the requirement would impose an unacceptable financial and paperwork burden on eligible recipients. None of the commenters provided estimates of the cost to a local recipient; some commenters estimated a national aggregate cost of $21,000,000 each year. Many commenters expressed the view that the cost of the proposed evaluation is disproportionate to the amount of funds awarded under the Act to a recipient, and predicted that many recipients would refuse to participate in the program assisted under the Act. Some commenters predicted that recipients would conduct superficial evaluations to hold costs down, or recipients would use most of their funds for evaluations rather than for program improvement activities and services, including supplementary services for members of special populations. Most of the commenters opposing the evaluation requirement on the basis of cost recommended that §403.191 require a recipient to evaluate only those particular projects supported with funds awarded under the Act.

Other commenters stated that, while they support the proposed rule as the best method for an effective evaluation, they acknowledged that it might pose financial difficulties for some recipients, and urged the Secretary to consider permitting a recipient to use cost saving measures such as sampling or providing for a phase-in period. However, another commenter urged the Secretary not to permit sampling because of the high risk of error and potential for manipulation. This commenter also opposed permitting a recipient to phase in the requirement because a recipient would not collect complete data and could not precisely target program improvement activities. Another commenter asked the Secretary to indicate what constitutes an acceptable sample. Another commenter who supported the proposed rule believed that it would be less costly to conduct an annual evaluation based on all students in all projects, rather than to attempt to evaluate the extent to which students participating in projects funded under the Act have benefitted from the use of the funds awarded under the Act.

One commenter objected to the scope of the evaluation requirement, on the grounds that the statewide standards and measures in §403.202, plus the standards and measures already in use by State and local entities, are extensive and will lead to a superficial evaluation. The commenter proposed that the regulations permit the standards and measures required by section 115(a) of the Act to be phased in over the three-year period of the State plan. Thus, for example, the State would apply, in the first year, the standards and measures relating to academics; in the second year, the standards and measures relating to vocational skills attainment; and in the third year, the standards and measures relating to follow-up and special services. Other commenters proposed evaluating the entire program over a five-year period. A few commenters proposed that the evaluation be conducted less frequently than annually because programs do not change significantly from year to year.

Many commenters argued that the requirement to evaluate an entire program unnecessarily duplicates other evaluation requirements, and that adjusting their existing evaluation systems to accommodate the requirements of the Act will be expensive. In this respect, one commenter challenged the Secretary's certification that the regulations will not have a significant economic impact, stating that every small entity in the country will have to restructure its current evaluation system to comply with the proposed rule. Another commenter, although opposed to the requirement to evaluate the entire program, conceded that much of the information required under the Act is probably already being collected. One commenter who supported the scope of §403.191 encouraged the Secretary to coordinate the requirement for evaluation under the Act with evaluations required by regional academic accrediting agencies.

One commenter, citing the burden imposed by the evaluation requirement on recipients, suggested increasing the amount of funds a State may reserve for administration, or increasing funding of the National Center for Research in Vocational Education, "to sample programs for evaluation and comparison relative to those supported with funds awarded under the Act." Another commenter proposed that the regulations be revised to require the State board to conduct the evaluation, with increased technical assistance funding, and to require that only the specific projects funded under the Act be evaluated.

Discussion: The Secretary has carefully considered the comments that the requirement to evaluate a recipient's entire vocational program imposes undue hardship on recipients, and has determined that proposed §§403.191 and 403.201 should be changed. The changes in the scope of the evaluation requirement address the concerns of numerous commenters and is in keeping with the Department's heightened efforts to reduce regulatory burden and increase flexibility for educators.

Section 403.191 has been modified to provide that a recipient of funds under Title II, Part C of the Act must evaluate annually the particular projects, services, and activities receiving assistance under a basic program listed in §403.60, or a special program listed in §403.130, unless the State determines under §403.201 that only a broader evaluation would be effective.

Section 403.201(a)(3) has been changed to require a State board to determine whether a recipient of funds under Title II, Part C of the Act must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program in order to assess the effectiveness of those projects, services, and activities. Section 403.201(a)(4) has been added to require a State board to (1) determine whether the entire local vocational education program—or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic or special program; and (2) require a recipient to conduct an evaluation consistent with the State board's determination.

The Secretary wishes to emphasize that there are reasons why a State may decide to require a local evaluation that is broader in scope than the minimum required by §403.191, as revised. A State could determine that, because its recipients may use funds awarded under the Act jointly with State and local funds or for isolated costs such as equipment, the recipients cannot measure the impact of the Federal funds alone. A State also could determine, based on its particular needs and objectives and those of its recipients, that it is necessary to measure overall program improvement using the standards and measures developed under §§403.201 and 403.202 and not simply the impact of the funds awarded under the Act. In any instance in which a State decides that a broader evaluation is required under §403.201(a)(3), a State is subject to the requirements of §400.7(b).

Regardless of the determination made by a State as the necessary scope of the evaluation, its recipients of funds under Title II, Part C of the Act may use funds awarded under Title II of the Act and the special programs under Title III of the Act, as listed in §403.130, to conduct the evaluation required in §403.191 to the extent that the costs are reasonable, necessary, and are related to the purposes for which the funds are awarded. The use of funds for the evaluation must also be consistent with applicable requirements for using funds awarded under the Act, such as the requirement in §403.196 to use funds awarded under Title II to supplement, and not supplant, State and local funds.

Also, the Secretary notes that preliminary information from the National Center for Research in Vocational Education indicates that roughly half of all States already have specific standards and measures for vocational students. Of these States, 56 percent apply the standards and measures to all students in secondary vocational education, and 64 percent apply the standards and measures to all students in postsecondary vocational education.

Thus, the Secretary encourages States to review the evaluation provision and the statewide standards and measures to design an evaluation system that is meaningful, in terms of what the State intends to measure through the local evaluation and the particular needs and objectives within the State. Regardless of the scope of the evaluation, the Secretary encourages a State and its recipients to avoid unnecessary burden by coordinating evaluation systems to eliminate duplication, so long as the statewide measures developed under the Act are addressed. State boards and recipients are also free to coordinate evaluations under §403.191 with evaluations required by regional accrediting agencies to the degree it is appropriate. To the extent feasible, recipients should use existing data and data collection systems.

The Secretary also notes that the burden of the evaluation may be influenced by the number of indicators used. Sections 403.202(a)(1) and (2) give States the option to adopt only two measures as a part of the statewide system of core standards and measures—one for learning and competency gains, and one from the measures of performance listed in section 115(b)(2) of the Act. A recipient could, therefore, base its evaluation on a limited number of indicators. However, a State or a recipient is free to include additional measures, if it chooses.

The Secretary has also reduced the burden of implementing the evaluation requirement by clarifying in §403.191 that recipients may rely on representative samples in conducting the evaluation. So long as the samples are representative of the targeted group, there is little potential for the abuses cited by one commenter who opposed sampling. However, the Secretary acknowledges the wide variety of the types of projects assisted under the basic or special programs, the populations participating, and the range in size of recipients. A recipient may choose, for example, to conduct an evaluation based on a representative sample of students, or of students in a particular grade, or of sites assisted under the Act. The Secretary notes that a recipient is not limited to sampling by these examples, and that not all of these samples will result in reliable data for every eligible recipient. Therefore, §403.191 gives a recipient the flexibility to determine which methods to employ as it is in the best position to know which methods are most feasible, cost effective, and reliable for it.

The Secretary has modified proposed §403.191, in response to comments, to permit sampling and to require a recipient to evaluate the particular projects, services, and activities receiving assistance under a basic program listed in §403.60 or a special program listed in §403.130, unless the State board determines under §403.201(a)(3) that a broader evaluation is necessary to be effective. However, the Secretary does not agree with some commenters that it would be effective to permit a recipient to phase in the evaluation or the standards and measures. Recipients would have difficulty comparing progress from year to year if the standards and measures are phased in. With respect to other comments recommending that the Secretary reduce the burden of the proposed §403.191, for instance, by requiring evaluations less frequently than annually, or by transferring the requirement to the State board, section 117(a) of the Act requires a recipient of financial assistance under Title II, Part C of the Act to conduct an annual evaluation.

As discussed more fully in response to comments on the uses of funds, §403.191 has been changed to clarify that funds awarded under the Act may be used to conduct the evaluation to the extent reasonable, necessary, and consistent with all applicable requirements for using funds awarded under the Act.

The Secretary notes that the scope of §403.191 has been modified to address the concern of some commenters that, if funds awarded under the Act could be used to pay for the cost of evaluating a recipient's entire vocational education program, funds available for activities and services to students would be severely depleted.

Changes: Sections 403.191(a)(1), (c)(2), and (d) have been changed to indicate that a recipient of funds awarded under Title II, Part C of the Act must evaluate the particular projects, services, and activities receiving assistance from a basic program listed in §403.60, or a special program listed in §403.130, unless the State board determines that a broader evaluation is required under revised §403.201(a)(3). Corresponding changes have been made to §403.192(b)(1), regarding the requirement for a local improvement plan. Language has also been added to §403.191(a)(1) to clarify that a recipient may use a representative sample in evaluating its entire vocational education program.

Local evaluation — Scope of requirement (§403.191(a)(1))

Comments: Numerous commenters objected to the requirement in §403.191(a)(1), that a recipient of funds under Title II, Part C of the Act must evaluate its entire vocational education program. These commenters argued that the requirement is inconsistent with language in section 117(a) of the Act, which provides for an evaluation of the "effectiveness of the program conducted with assistance under this Act," and section 115(a) of the Act, requiring the development of standards and measures to be used to evaluate "all programs assisted under this Act." These commenters stated that the term "program" refers only to the particular projects assisted with funds awarded under the Act. Other commenters stated that, when Congress intends a requirement to apply regardless of the source of funding, Congress knows how to impose the requirement expressly, and that Congress would not have imposed so broad an evaluation requirement without providing the funds to pay for it.

Some commenters challenged the Secretary's rationale for requiring an evaluation of a recipient's entire program: that it is not possible to measure separately the effectiveness of the funds awarded under the Act because they are often intermingled with State and local funds. These commenters argued that, on the contrary, the requirements in section 235 of the Act to fund limited sites or program areas, and to ensure that the programs funded are of such size, scope, and quality as to be effective, ensure that the funds awarded under the Act will make an easily traceable, significant, and therefore measurable impact. Other commenters argued that it was incongruous to require a recipient to evaluate its entire vocational program regardless of the particular projects receiving funds under the Act, in light of the fact that section 235 of the Act requires a recipient to concentrate funds awarded under Title II, Part C of the Act at a limited number of sites or in a limited number of program areas based on high concentrations of special populations.

Some commenters expressed the view that if the purpose of the local evaluation is to assess the effectiveness of funds awarded under the Act, then only projects assisted with these funds should be evaluated. These commenters asserted that evaluating a recipient's entire vocational education program would yield unreliable data for assessing the impact of the funds awarded under the Act on the recipient's vocational education program.

A few commenters challenged the requirement to evaluate an entire program without regard to which areas of the program receive Federal funding as an instance of unwarranted Federal intrusion into State and local affairs. One commenter stated that, in contrast to section 235 of the Act, the proposed evaluation requirement was not in keeping with the intent of Congress to drive control, flexibility, and accountability to the local level. A few commenters questioned the Secretary's authority to enforce the requirement that a recipient evaluate its entire program and improve areas that are deficient whether or not those areas receive funds awarded under the Act. Another commenter questioned a State's legal authority for requiring a recipient to evaluate non-federally funded areas of its program.

Other commenters supported the proposed rule as the only effective method for tracking program progress. One commenter stated that without a broad evaluation, a recipient would not know where to devote funds to improve its program. Another commenter pointed out that Federal funding comprises only about 10 percent of the cost of vocational education in a State, and that under section 235 of the Act a recipient may shift funds among projects from year to year; therefore, an annual evaluation of the entire program is essential to assess the impact of the Federal funds.

One commenter supported the scope of the evaluation requirement, but recommended that the Secretary include a definition of the word "program," to distinguish the meaning of program in the evaluation provisions from the common use of the term to refer to sets of related courses.

Discussion: In light of the numerous comments citing the burden that proposed §403.191 would impose on recipients, the scope of the minimum evaluation has been modified to require evaluation of only a recipient's projects, services, and activities receiving assistance under the basic or special programs listed in §§403.60 and 403.130, respectively, unless the State board determines under §403.201(a)(3) that a broader evaluation is necessary to be effective. The Secretary believes that limiting the evaluation to the particular projects, services, and activities receiving assistance under a basic or special program is but one legally sound interpretation of the term "program" as it is used in sections 115(a) and 117(a) of the Act. Accordingly, §403.201 has been revised to provide States the flexibility and responsibility to expand the scope of the evaluation, as discussed in response to comments on the burden imposed by proposed §403.191(a)(1).

Changes: Changes have been made to §§403.191, 403.192, 403.201, and 403.202, as noted in response to comments on the burden of implementing proposed §403.191(a)(1).

Comments: One commenter expressed confusion about the scope of the requirement to evaluate an entire program. The commenter appeared to believe that a recipient receiving only funds awarded under Title III of the Act would be required to evaluate its entire program.

Discussion: The Secretary wishes to emphasize that only recipients of funds awarded under Title II, Part C of the Act are subject to the requirement to conduct an evaluation in §403.191. Section 403.191(a)(1) provides, however, that a recipient of funds under Title II, Part C of the Act must evaluate the particular projects, services, and activities receiving support under the basic or special programs listed in §§403.60 and 403.130, respectively, including those projects that receive only funds awarded under the special programs authorized by Title III of the Act.

Changes: None.

Local evaluation — Uses of funds (§403.191)

Comments: Commenters expressed confusion as to whether a recipient may use funds awarded under the Act to support the cost of conducting an evaluation under §403.191. One commenter stated without elaboration that the Act does not permit recipients to use funds awarded under the Act for the evaluation. Other commenters simply requested that the final regulations clarify this matter. One commenter asked that the regulations clarify that funds received under Title II, Part C of the Act could be used, and that the regulations provide for a waiver of the requirements of §403.111(d) for giving priority for funding under Title II, Part C of the Act to a limited number of sites or program areas, based on high concentrations of special populations. Some commenters requested clarification of whether funds awarded under Title II, Part C of the Act used to pay for the evaluation must be included in the five percent a recipient is permitted to use for administration under section 235(c)(4) of the Act.

Discussion: A recipient of funds under Title II, Part C of the Act may use funds awarded under Title II of the Act and the special programs under Title III of the Act, as listed in §403.130, to conduct the evaluation required in §403.191, to the extent that the costs are reasonable, necessary, and are related to the purpose for which the funds are awarded, such as sex equity, or consumer and homemaking education. The use of funds for the evaluation must also be consistent with applicable requirements for using funds awarded under the Act, such as the requirement in §403.196 to use funds awarded under Title II to supplement, and not to supplant, State and local funds. The Department's practice has been to exclude the costs of evaluations from the costs of administration. If a recipient uses funds awarded under Title II, Part C of the Act for this purpose, the recipient is not required to count those costs as part of the five percent reserved for administration under section 235(c)(4) of the Act. The requirement in section 235(b) of the Act, to give priority, applies to a local recipient's distribution of funds to sites or program areas. This provision does not prohibit a recipient from reserving a necessary and reasonable amount of funds for evaluation or administration before distributing funds to sites or program areas. Therefore, it is not necessary to waive section 235(b) of the Act in this instance.

Changes: Section 403.191(e) has been added to clarify that a recipient may use funds awarded under the Act to support the cost of the evaluation required in §403.191. Use of funds for evaluation must be reasonable, necessary, related to the purpose for which the funds are awarded, and consistent with applicable requirements for the use of funds awarded under the Act.

Local evaluation — Application of statewide standards and measures (§403.191(a)(1))

Comments: A few commenters objected to the imposition of standards and measures developed under the Act upon projects funded under other authorities, such as JTPA or JOBS; these commenters noted that these projects are already subject to evaluation requirements that do not coincide with the requirements of the Act. Other commenters argued that the evaluation required in sections 115 and 117 of the Act was designed only to apply to the particular Federal interest in serving members of special populations, and, thus, was not suited to evaluating projects funded under other authorities.

Other commenters noted that vocational education projects may address different needs and serve different populations, and expressed the view that, if all of the components of a recipient's program were subject to the statewide system of standards and measures required by section 115(a) of the Act, the results would be misleading and result in inaccurate identification of areas needing improvement. Some commenters concluded that States, in attempting to accommodate the variety within programs, would adopt the most minimal standards rather than focusing on high quality standards designed to further the goals of the Act. One commenter stated that the evaluation would not lead to consistent, reliable data for the Federal government because of the programmatic differences between States.

Discussion: With respect to applicability of the statewide standards and measures to projects that must be evaluated under §403.191 and that also receive assistance under JOBS and JTPA, §403.202(b) provides that a State board, in developing the statewide system of standards and measures, should consider, and provide for consistency with, the standards and measures developed under JOBS and JTPA, to the extent appropriate.

Although the scope of the evaluation has been modified, the Secretary does not agree with the comment that the evaluation and the standards and measures in §§403.191 and 403.202 are geared only towards "Federal interests" in serving special populations. The Secretary notes that, as clarified in response to comments on §§403.111(a)(3) and 403.111(b), once a recipient has ensured that the needs of special populations are met and has given priority for funding to sites or program areas with the highest concentrations of special populations, the recipient may serve the general population as well. Moreover, the standards and measures from which a State must choose in §403.202 consist of measures of general applicability, such as completion of secondary school, and job skill attainment.

The Secretary also notes that, to the extent a State board determines under §403.201(a)(3) that the evaluation should include projects not receiving assistance under the Act, the regulations provide ample flexibility for the State board to design standards and measures that take into account the varying needs and objectives of local programs. Section 403.201 provides that a State board must consult with the committee of practitioners, which includes representatives of recipients, in developing the standards and measures. Section 403.202(a)(3) provides that the standards and measures must include incentives and adjustments for special populations. The measures listed in §403.202 include measures appropriate for different instructional levels and needs. Section 403.191(b)(1) also provides that recipients may modify the standards and measures according to a recipient's economic, geographic, or demographic circumstances, and the populations to be served.

Finally, the Secretary does not agree with some commenters that the purpose of the evaluation requirement is to provide uniform data about local vocational education programs to the Secretary. The evaluation is primarily intended to assist a recipient in identifying and directing resources to its deficient areas. The Act does not contemplate requiring a recipient to submit the results of the evaluation to the Secretary.

Changes: None.

Local evaluation — Modification of standards and measures (§403.191(b))

Comments: Some commenters expressed apprehension that a recipient, in order to boost its evaluation results, would modify standards and measures to result in lower expectations for special populations. These commenters proposed that §403.191(b) be changed to provide that a recipient may supplement, but not weaken, the State standards and measures. The commenters also suggested that §403.191(b) be revised to clarify that a recipient may not modify the standards and measures without the express approval of the State board.

Discussion: Section 403.191(b) provides that a recipient may modify the statewide standards and measures, based on certain factors provided in section 115(a) of the Act, and in conformance with the assessment criteria in the State plan. The Secretary believes this provision makes it clear that the State board sets the boundaries for local modification of the standards and measures and ensures that the effectiveness of its system of standards and measures is not impaired through local modification.

Changes: None.

Local evaluation — Equal access to vocational education program for members of special populations (§403.191(c))

Comments: Some commenters objected to §403.191(c), which requires recipients, with the full participation of representatives of special populations, to identify and adopt strategies to overcome barriers resulting in lower rates of access to, or success in, vocational education for special populations. These commenters argued that §403.191(c) does not accurately reflect section 117(c) of the Act, which provides that a recipient under Title II, Part C must conduct this evaluation, with "the full participation of representatives of individuals who are members of special populations." The commenters wanted §403.191(c) changed to repeat the statutory language, and to clarify that section 117(c) of the Act requires the participation of outside representatives of these populations, such as parents, advocates, and members of special populations themselves, not program administrators.

Discussion: The Secretary believes that §403.191(c) already provides for the participation of the individuals listed by the commenters — representatives of special populations, including parents, advocates, and members of special populations themselves — and, therefore, does not believe that a change to the regulations is necessary. With respect to excluding categories of individuals such as program administrators, the Secretary does not believe it is appropriate to set limits in §403.191(c) on who may best represent the interests of members of special populations.

Changes: None.

Local evaluation — Progress in providing students with strong experience in, and understanding of, all aspects of the industry (§403.191(d))

Comments: Some commenters expressed concern that a recipient would narrowly construe the requirement in §403.191(d), which provides that a recipient must include in its evaluation an assessment of the progress of the recipient's vocational education program in providing students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. These commenters proposed that the regulations place emphasis on the need for strong experience in, and understanding of, all aspects of the industries, and the need to interpret the phrase "all aspects of the industry" broadly.

Discussion: Section 403.191(d) expressly provides that a recipient of funds under Title II, Part C of the Act, as part of the annual evaluation required by §403.191(a), must evaluate its progress in providing vocational education students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. Therefore, the Secretary does not believe that the regulations should contain additional emphasis on these elements.

Changes: None.

Local evaluation and standards and measures — Application to members of special populations (§§403.191 and 403.202)

Comments: One commenter requested that §403.191 be changed to clarify that a recipient is to use the standards and measures to assess its program, not to assess individual students. The commenter wanted §403.191 to emphasize that members of special populations may not be barred from participation in vocational programs because a recipient believes their participation will result in poor evaluation results. Additionally, the commenter felt that the Secretary should stress that "creaming"—only permitting the most successful students to participate—would not be tolerated.

Discussion: The Secretary agrees with the commenter that a recipient may not bar special populations from enrolling in its vocational program. However, the regulations have not been modified as the commenter requested because §403.191(c) requires a recipient, in conducting the evaluation, to identify and adopt strategies to overcome barriers to access and success for members of special populations. In addition, §403.111(c)(3) requires a recipient to provide for the equitable participation of members of special populations in the vocational program. Moreover, the State board makes an assurance, under §403.32(a)(18), to ensure that members of special populations will be granted equal access to the full range of vocational education as that accorded to the general population. The Secretary considers these provisions significant protection against the possible abuses the commenter cited and sees no need to reiterate these provisions in §403.191 or §403.201.

Changes: None.

Local improvement plans — Funds available for improvement (§403.192)

Comments: One commenter asked what funds could be used to improve a deficient project at a site not receiving funds awarded under the Act; the commenter noted that, under section 235 of the Act, a recipient may fund only a limited number of sites or program areas, based on high concentrations of special populations.

Discussion: The scope of the evaluation under §403.191 has been changed to include only the particular projects, services, and activities assisted under programs listed in §§403.60 or 403.130, unless the State board determines that a broader evaluation is required. The Secretary has made corresponding changes to the requirements for a local improvement plan, in §403.192(b)(1). However, the Secretary points out that regardless of the scope of the evaluation, if a project covered by the evaluation is identified as deficient, funds awarded under Title II, Part C of the Act may be used to improve a deficient project at a site only if all of the requirements of the Act, including the requirement to give priority under section 235(b) of the Act, are met.

Changes: Section 403.192(b)(1) has been changed to provide that a recipient must include in the local improvement plan strategies designed to achieve progress in improving the recipient's projects, services, and activities receiving assistance under the programs listed in §§403.60 or 403.130.

Requirements for program improvement (§403.192)

Comments: A commenter noted that the requirement in §403.192(b) for an eligible recipient to consult with teachers, parents, and students concerned with or affected by the program in developing a program improvement plan was burdensome. The commenter believed that carrying out this provision would require personnel, time, and money that could be better devoted to student services.

Discussion: Section 403.192(b) reflects the unambiguous requirement of section 117(b) of the Act. Moreover, it is consistent with the intent of the Act to have consultation on issues affecting program improvement.

Changes: None.

State and local improvement plan — Sanctions if improvement is not shown (§§403.192 and 403.204)

Comments: One commenter noted that the proposed regulations provided no incentive for a recipient to meet or exceed the statewide standards and measures because §§403.192 and 403.204, related to improvement plans, do not contain the threat of loss of funding if improvement is not demonstrated. This commenter recommended including a provision in the regulations to withdraw funding from a recipient if the recipient does not demonstrate sufficient progress.

Discussion: Sections 403.192 and 403.204 implement sections 117(b) and (c) of the Act, which do not provide for loss of funding if a recipient fails to show progress under a State and local improvement plan. Accordingly, the Secretary does not believe it is appropriate to cut off funding in these circumstances.

Changes: None.

Information requirements regarding special populations (§403.193)

Comments: One commenter believed that §403.193 is unclear because it suggests that funds awarded under the Act might be used to assist special populations in other, non-vocational aspects of schooling. The commenter argued that this would deplete funds for vocational education for all students.

Discussion: The Secretary believes that §403.193 is quite clear from its context that it requires information be provided only about vocational education opportunities and activities available to members of special populations.

Changes: None.

Comments: Two commenters questioned whether §403.193 requires eligible recipients to provide notification to parents of students over 18 years and recommended that §403.193 be clarified.

Discussion: Section 403.193(b) requires any LEA, area vocational education school, or intermediate educational agency that receives funds under Title II of the Act to provide the information described in §403.193(a)(1) to students who are members of special populations and their parents at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade, regardless of the age of the student. Likewise, §403.193(c) requires any eligible institution that receives funds under Title II of the Act to provide the information described in §403.193(a)(1) to each individual who requests information concerning, or seeks admission to, vocational education programs offered by the institution regardless of the age of the individual. Section 118(b) of the Act imposes no greater or lesser responsibility on an eligible recipient with respect to students that are over 18 years of age.

Changes: None.

Comments: Some commenters requested that §403.193(a)(1)(i) clarify that an LEA that receives funds under Title II of the Act must provide special populations students and their parents with information concerning opportunities available in vocational education in programs provided by the LEA and any area vocational education school or intermediate educational agency that serves students from the LEA.

Discussion: The Secretary believes that §403.193(a)(1)(i) is clear that an LEA must provide information concerning all opportunities in vocational education available to a special populations student. This includes information concerning all programs open to the student, whether they are conducted directly by the LEA, an area vocational education school, or intermediate educational agency that serves students from the LEA, or directly by the State, as is sometimes the case.

Changes: None.

Comments: Some commenters requested that §403.193(c)(2) be amended to require eligible institutions to assist in the preparation of applications related to admission when—not if—appropriate. The commenters believed that the use of "when" conveys a more affirmative sense that this assistance will be appropriate.

Discussion: The Secretary does not agree that §403.193(c)(2) implies that this assistance will or will not be appropriate. Rather, consistent with Department style, "if" is used to refer to a condition or situation. The Department reserves the use of "when" to refer to time.

Changes: None.

Cost of providing information and supplementary services to members of special populations (§403.193(e))

Comments: Numerous commenters supported §403.193(e), which provides that an eligible recipient does not have to use non-Federal funds to pay the costs of services and activities required by that section and by §§403.111(a)(2)(i) and (c)(3) and 403.190(b), unless the requirement is imposed by other applicable laws. Some commenters indicated that, while they supported the spirit of the equal access provision, they did not believe that equal access is a financial obligation for a recipient to pay any and all costs related to an unlimited assurance.

Other commenters requested that the provisions limiting services to members of special populations to the extent of available Federal funds be deleted because they believed that this provision was contrary to a clear statutory condition for funding. Another commenter recommended that an eligible recipient be required to spend funds awarded under the Act to meet the requirements of §§403.190(b) and 403.193, and be encouraged to make such expenditures from State and local funds as the eligible recipient may determine is necessary to meet the requirements of the Act.

Discussion: The Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. Accordingly, the provisions of both §§403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. Moreover, if an eligible recipient is already providing the information required in §403.193 with non-Federal resources, it need not, of course, use Perkins Act funds to duplicate those expenditures.

Changes: None.

Comments: Many commenters noted that, even though §403.193(e) indicates that recipients do not have to use non-Federal funds to pay for supplementary services unless the requirement is imposed by other laws, a recipient would have to spend State and local funds to provide supplementary services to all special populations students under §403.190(b), pursuant to 34 CFR Part 100, Appendix B, which requires all recipients of Federal vocational education funds to spend non-Federal funds to provide equal access. These commenters indicated that they thought the proposed regulations construed equal access required by section 118(a) of the Act to be synonymous with pre-existing civil rights requirements, which independently require equal access to vocational education programs. These commenters expressed confusion over the interplay between §403.193(e), and the requirements imposed on eligible recipients in §§403.111(a)(2)(i) and (c)(3), and 403.190(b). The commenters requested that the regulations clarify the interplay between these provisions and provide numerous examples.

Discussion: The "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs," which are contained in Appendix B of 34 CFR Part 100, implement the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. While these provisions provide protection for some of the special populations under the Perkins Act, for example, individuals with disabilities and limited English proficient students, and require equal access, including the provision of supplementary services, they do not apply to other special populations under the Perkins Act, such as educationally and economically disadvantaged individuals. As

§400.9(b) makes clear, the Act does not in any way limit the rights of members of special populations accorded by other Federal laws, for example, Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

However, the regulations implementing the Perkins Act do not construe the terminology of the Perkins Act to be synonymous with the terms used in civil rights provisions, such as Title VI of the Civil Rights Act. Title VI of the Civil Rights Act does not apply to all of the groups included in the definition of "special populations," as that term is used in the Perkins Act. Similarly, other Federal statutes, such as the IDEA and section 504 of the Rehabilitation Act of 1973, require services for disabled students but not other special populations as that term is used in the Perkins Act. Therefore, with respect to these populations, such as disadvantaged individuals, an eligible recipient is required to provide only the services specifically required by the Perkins Act. As noted in §403.193(e), an eligible recipient is not required to use non-Federal funds to pay the cost of services and activities required by §§403.193, 403.111(a)(2)(i) and (c)(3), and 403.190(b), unless that requirement is imposed by other laws, such as Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

Changes: None.

Comparability (§403.194 and appendix B to Part 403)

Comments: Several commenters suggested that it would be helpful to have models of standard assurance statements to ensure compliance with the requirements in §403.194. Some commenters indicated that the assurance models should ensure compliance that reflects "State support variation."

Discussion: There are likely to be many possible standard assurance forms that could be used by various States and local educational agencies, reflecting the flexibility in the regulations on meeting comparability requirements. To provide models may discourage flexibility. If the Department becomes aware of particularly useful model forms that would have broad applicability, it will disseminate them. With regard to the comment as it pertains to variations in State support, it does not appear likely that State support will vary within a school district, so it is not clear to what potential problem the commenters are referring. Furthermore, the Secretary provides, in paragraph (b) of Example 2 in Appendix B to Part 403, for a 10 percent variance in meeting comparability requirements and for exclusions from the comparability calculations for special State programs such as phase-in programs. All of these provisions allow for "State support variation."

Changes: None.

Comments: One commenter supported the proposed regulatory language and discouraged any more stringent criteria, such as requiring comparisons at the vocational education program level to determine comparability, as being too burdensome. Another commenter indicated that comparability should be limited to State and local educational agencies comparing services in vocational programs. To include more, this commenter believed, brings in too many variables and factors that are not controlled by the State or local educational agencies, such as the local property rate and teacher contracts. Examples should focus on comparing vocational education programs and services.

Discussion: Section 113(b)(19) of the Act requires that State and local funds be used in an LEA's schools that are receiving funds under the Act to provide "services, which taken as a whole, are at least comparable" to services provided in that LEA's schools that are not receiving funds under the Act. Thus, since the statute provides that services in general taken as a whole be the subject of the comparison, the statutory language does not support an interpretation that only vocational education services were intended to be included in comparability determinations.

Changes: None.

Comments: One commenter indicated that the "comparability expenditures" included in the examples in Appendix B to Part 403 (formerly in proposed §403.194), were inconsistent with the "comparability services" required by the section 113(b)(19) of the Act. This commenter concluded that all sites controlled by an eligible recipient would be forced to have the same programs covering the same subject areas, which would be very costly. Often, this commenter felt, only one site offers a particular service, and students from all sites are transported to the one site. This commenter believed that Congress did not intend that all sites have identical programs, but once sites were selected, the recipient would not reduce its contribution of local funds to these sites and replace them with Federal funds.

Discussion: The Secretary believes that the examples in Appendix B to Part 403 are consistent with the Act, and that the examples of "services" are appropriate. The Secretary does not believe that §403.194(a) requires having the same programs in the same subject areas. The examples in Appendix B to Part 403 provide considerable flexibility especially by permitting a 10 percent variance. The Secretary also disagrees that the intent of Congress was to ensure that an LEA does not reduce its contribution of State and local funds and replace them with Federal funds. While those purposes are related to the comparability requirement, they are more closely associated with "maintenance of effort" and "supplement, not supplant" provisions set forth in sections 502 and 516 of the Act.

Changes: None.

Comments: One commenter indicated it is unclear if there is a matching requirement for LEAs that have more than one school or site.

Discussion: There are no longer matching requirements that apply to LEAs under the Act. Comparability requirements are not matching requirements, but rather they require that an LEA provide comparable resources to its schools if the LEA has more than one school or site.

Changes: None.

Comments: Several commenters suggested clarifying the application of the comparability requirement to a consortium formed pursuant to section 321(b)(1) of the Act, especially if the consortium is composed of several LEAs with one high school each. One commenter suggested that an exemption for an LEA with one school apply; otherwise, the commenter said, high schools in different districts would be compared, which was not intended by the Act. Another commenter suggested that the provision be clarified to indicate that it pertains only to sites within a given LEA, and not to all sites of all the LEAs within a consortium. One commenter also suggested that an example be included that involves an area vocational district that is composed of multiple LEAs.

Discussion: The Secretary agrees with the commenters that section 113(b)(19) of the Act was intended to apply only to sites within a given LEA, and not to all sites of all LEAs within a consortium. Within each LEA in a consortium, however, comparability requirements would have to be met, but the comparability requirements do not apply to an LEA with a single high school or secondary site.

The commenter did not provide information about what was meant by the term "vocational district." However, if a "vocational district" meets the definition of an LEA in §400.4(b), it would be subject to the comparability requirements in the same manner as other LEAs. LEAs within a "vocational district" that is not itself an LEA would be subject to the comparability requirements in the same manner as LEAs within a consortium.

Changes: A change has been made to §403.194(b) to clarify how the comparability requirements affect consortia.

Comments: One commenter indicated that, since comparability is a new requirement, an LEA needs to be afforded some period of time to come into compliance, such as 30 days from the date that noncompliance is determined to submit a plan for meeting the requirement to the

State agency. The commenter also felt that the State should have 30 days to approve or disapprove the plan, and the LEA should have 12 months from the date of the determination of noncompliance to correct the violation. The commenter also suggested that assigning a dollar value to the amount to be withheld or repaid is needed.

Discussion: If an LEA initially demonstrates its compliance with the comparability requirements, but fails to maintain compliance, the Secretary agrees that the LEA should be afforded a reasonable time to restore its compliance with the comparability requirements. Under §403.200, the State has the responsibility to monitor and determine what steps need to be taken to ensure compliance. The Secretary wants to preserve reasonable flexibility and not be prescriptive in setting deadlines for compliance, and observes that 30 days to achieve compliance is reasonable, but that 12 months or a full year for an LEA to be out of compliance appears to be unreasonable. With regard to the dollar amount to be withheld or repaid if there is lack of compliance, section 113(b)(19) of the Act provides that a State must provide an assurance that funds are not being used in the schools of an LEA that is out of compliance with the requirement. Section 403.200(b) sets forth provisions for determining the amount the State must withhold or require to be repaid.

Changes: None.

Comments: One commenter indicated that comparability should not apply to all funded programs. The commenter felt, for example, that it would be unreasonable to require that all secondary schools in an LEA be comparable with one another before the LEA could conduct a curriculum integration project using State leadership funds.

Discussion: The Secretary believes that the comparability requirement applies to an LEA's particular school or schools that receive funds under the Act awarded under any program subject to the State plan, consistent with the State's assurance required by section 113(b)(19) of the Act. Thus, for example, an LEA conducting a curriculum leadership project with State leadership funds awarded under Title II, Part A of the Act must meet the comparability requirement to be eligible for those funds. However, the State leadership funds under the Act awarded to the LEA would not affect the comparability determination itself, since only State and local funding is used in the comparison. Furthermore, as noted above, the comparability requirements do not apply to all State and locally funded programs; certain programs listed in §403.194 are exempt from comparability determinations.

Changes: None.

Comments: Several commenters requested that the examples in Appendix B to Part 403 (formerly in proposed §403.194) be deleted or that they be rewritten in the regulations or issued in separate guidance. The commenters stated that Example 1 in Appendix B will result in only "paper compliance" as the commenters believe a similar regulatory provision does in Chapter 1 of the Elementary and Secondary Education Act of 1965, and that Example 2 in Appendix B should not be allowed to substitute for all of the "requirements" in Example 1 in Appendix B. Finally, the commenters indicated that, even if the examples are adequate for Chapter 1, they are not adequate to measure the wide differences among vocational schools and programs that determine whether "programs" are in fact comparable.

Discussion: The examples are based on examples in the regulations for Chapter 1 of the Elementary and Secondary Act of 1965, which has a similar comparability requirement. From all indications that the Secretary has, these examples in Chapter 1 regulations have been effective in providing adequate guidance to grantees and in helping to ensure that the statutory provision is implemented properly. The commenters seem to base some of their suggestions on their belief that each example establishes requirements. The examples do not create requirements; they are merely illustrative. The suggested relationship of Example 1 in Appendix B to Example 2 in Appendix B would, therefore, be inappropriate.

With regard to the comment concerning the inadequacy of "Chapter 1-type" comparability measures to measure the differences among vocational education schools and programs, the Secretary believes that the regulations provide for appropriate measures. Congress enacted a comparability provision in the Act that is similar to the Chapter 1 provision. The schools involved in Chapter 1 are also diverse with regard to programs and services, and the comparability provisions have worked well.

Changes: None.

Supplanting (§403.196)

Comments: Several commenters supported §403.196 and thought that paragraph (c) was particularly helpful. However, several other commenters believed that §403.196(c) is confusing and contrary to the statutory language. These commenters asked for clarification and suggested that paragraph (c) negated paragraph (b) of §403.196. One commenter argued that the purpose of the statutory non-supplant provision was to permit funds awarded under the Act to be used to pay for costs of vocational education services required for ensuring equal access to children with disabilities under the IDEA and to adults under the Rehabilitation Act of 1973, and to permit States and other recipients for the first time to expend available Federal funds for individuals with disabilities, regardless of whether the services to these individuals had been provided with non-Federal funds in prior years.

Discussion: Section 403.196(c) clarifies that the limited purpose of the exception to the supplanting prohibition is to allow expenditures that would otherwise constitute supplanting only in instances where the expenditures at issue would be used to increase the amount of funds that would otherwise be available to pay the costs of an IEP or of meeting the requirements of section 504 of the Rehabilitation Act of 1973 for either children with disabilities or adults with respect to their participation in vocational education programs. In the absence of the exception to the supplanting prohibition in section 516(a)(1)(B) of the Act, which is implemented in §403.196(b), any use of funds awarded under Title II of the Act to pay the costs of an IEP or of complying with section 504 of the Rehabilitation Act of 1973 would present a classic case of supplanting in violation of the supplanting prohibition in section 516(a) of the Act because the use of State and local funds for these purposes is required in the absence of the Federal vocational education funds. This would be true whether or not a State or other recipient had expended Federal funds for these services to individuals with disabilities in prior years. However, the Secretary believes that it would be inconsistent with the obvious purpose of making an exception to the supplanting prohibition, which is to make more funds available to serve individuals with disabilities, to permit a State or recipient to reduce aggregate expenditures for these purposes.

Changes: None.

Use of equipment (§403.197)

Comments: One commenter believed that §403.197(a) should be interpreted to mean that only disadvantaged students may use equipment in a program during a particular class period. The commenter suggested that the regulations be revised to make clear that this narrow interpretation is correct.

Discussion: The Secretary disagrees that §403.197 can be interpreted to limit the use of equipment to disadvantaged students. Equipment purchased with funds under §403.112, 403.113, or 403.116 is available to all students in projects, services, or activities under §403.111 or to other students as described in §403.197.

Changes: None.

Comments: One commenter expressed concern that equipment purchases could be made for non-vocational needs.

Discussion: The Secretary finds that the procedural requirements set forth in §403.197 are adequate to prevent the misuse of funds envisioned by the commenter.

Changes: None.

State responsibilities for ensuring comparability (§403.200)

Comments: With regard to the responsibilities of the State, several commenters suggested that the procedures for annually demonstrating comparability in §403.194(c)(1) be developed either by the State educational agency (SEA) or by the LEA with SEA guidance and approval. Additionally, those commenters felt that §403.194 would improperly permit an LEA to continue to receive funds (minus a "penalty") even though it continues to operate a program in violation of the comparability requirements, and, therefore, the section should be changed to indicate that an LEA that has not taken steps to comply with comparability requirements should receive no funds.

Discussion: Under §403.200, the State board must monitor each LEA's compliance with the comparability requirements. Among the reasonable actions it could take under that authority is reviewing an LEA's procedures annually to determine if they comply with the statute and regulations, and providing guidance on those procedures if the State board feels that it is appropriate. The Secretary, however, does not believe it is necessary to mandate the steps or methods in a State's monitoring process.

With regard to the remedies for lack of compliance with the comparability requirements, §§403.194 and 403.200 make it clear that an LEA may receive an award under the State plan only if it meets the comparability requirements. These sections of the regulations indicate that an LEA may demonstrate compliance with the comparability requirements by filing an appropriate assurance.

The Secretary believes that the commenters have made an appropriate suggestion with regard to §403.200, concerning the withholding of funds. The provision has been modified to indicate that, if a violation is discovered after a grant award is made but during the time the program is in operation, a State could withhold all or a part of an LEA's grant, depending on the severity of the problem. In addition, an LEA that continues to be out of compliance in subsequent years would not be eligible to receive a grant award in those years. The regulatory change addresses the commenters' concern and also provides the State with flexibility in designing appropriate remedies. The appropriate remedy for a violation found after the period of availability of funds awarded is a refund to the State board of the amount or percentage by which the LEA failed to achieve comparability. The commenters incorrectly categorize any of these measures as a "penalty."

Change: A new paragraph (a) has been added to §403.200 and §403.200(c) has been changed to clarify the responsibilities of the State board and an LEA.

Statewide system of standards and measures (§§403.201 and 403.202)

Comments: A few commenters expressed satisfaction with §403.201(a)(1), which does not require the State board to develop separate standards and measures for secondary and postsecondary levels. One commenter believed that a State should decide whether separate standards are needed, but that a State should not be permitted to set different measures for secondary and postsecondary systems. This commenter believed that one system of measures is necessary to facilitate greater articulation between secondary and postsecondary institutions. Another commenter expressed the view that the regulation should be changed to make it clear that a State cannot develop separate systems of standards and measures for secondary, postsecondary, and adult education, but did not explain why.

Discussion: The Act neither requires nor prohibits separate standards and measures for secondary and postsecondary levels. The Secretary believes that a State board, in consultation with the committee of practitioners, is in a better position than the Secretary to determine whether separate standards and measures are appropriate.

Changes: None.

Comments: One commenter noted that, while section 115(a) of the Act requires a State board to develop standards and measures for secondary and postsecondary vocational educction programs, §403.201(a)(1) provides that the State board must develop standards and measures of performance for secondary, postsecondary, and adult education programs. The commenter argued that the inclusion of adult education programs was contrary to what the Act requires and should be deleted.

Discussion: Section 403.201(a)(1) is consistent with the requirements of section 115(a) of the Act, which provide that the standards and measures must apply to "all programs assisted under this Act." Funds awarded under section 232 of the Act provide assistance to postsecondary and adult education programs.

Changes: None.

Comments: Some commenters stated that, with respect to the statewide system of standards and measures, §403.202(a)(1) should clarify that the measure of student progress in the achievement of basic and more advanced academic skills is not limited to the achievement of academic skills related to the vocational program. The commenters also requested that the regulations require that the standards and measures address achievement of basic and academic skills in each of the following areas: math, reading, writing, science, and social studies. One commenter requested that the regulations define basic and advanced academic skills to include fundamental reading, math, writing, speaking, listening, and decision-making skills, while advanced skills would include higher level math and science skills. Other commenters suggested incorporating the definition of "more advanced skills" from Chapter 1.

Discussion: The Secretary does not agree that the evaluation must include an assessment of a student's achievement of academic skills that are unrelated to the vocational program. The evaluation must focus on a project's progress towards the goal of providing an integrated program of vocational and academic education. With respect to whether the standards and measures must address the achievement of basic and academic skills in math, reading, writing, science, and social studies, the Secretary believes that the State board should have the flexibility to determine whether all or some of these subjects must be addressed. The Secretary does not believe that the meaning of basic and more advanced academic skills should be prescribed by regulation. The definition offered by one commenter is an acceptable interpretation; however, a State board may devise a different, but a equally acceptable definition, depending on the needs and objectives of that State's program.

Changes: None.

Comments: Some commenters requested clarification that the measures of competency gains used in §403.202(a)(1) refers to a student's achievement of a set of specific skills and knowledge.

Discussion: The Secretary believes that the meaning of "competency gains" is straightforward and sees no need to add a definition of the term.

Changes: None.

Comments: Some commenters pointed out that §403.202(a)(2) requires that the statewide system of standards and measures include "one or more" of a list of measures, while section 115(b)(2) of the Act states that the standards and measures must include "one or more measures of performance, which shall include only ...." The commenters stated that this was a significant change in meaning, but did not elaborate.

Discussion: The Secretary believes a State board should have the flexibility to add other measures of performance that are related to the goals and purposes of the Act, so long as the State board selects at least one measure from the list in §403.202(a)(2).

Changes: None.

Comments: One commenter pointed out that §403.201(a)(2)(i), which implements section 115(a) of the Act, requires a State to develop a system of standards and measures by September 25, 1992; however, section 115(a) of the Act provides that the State must "develop and implement" the system of standards and measures by September 25, 1992. The commenter proposed that §403.201(a)(2)(i) be amended to reflect the requirements of section 115(a) of the Act, and include the requirement to implement the standards.

Discussion: The Secretary agrees that §403.201(a)(2)(i) should be modified to clarify that a Statewide system of standards and measures must be developed and implemented by September 25, 1992. The omission of the requirement to "implement" the standards and measures was inadvertent.

Changes: Section 403.201(a)(2)(i) has been changed to include the requirement that a State must develop and "implement" the system of standards and measures by September 25, 1992.

Comments: One commenter asked that the "incentives or adjustments" provision in §403.202(a)(3) be interpreted by regulation to mean the level of assistance, financial and otherwise, and not as an authority to lower standards and measures for special populations.

Discussion: Section 115(b)(3) of the Act, which is implemented in §403.202(a)(3), requires a State to include in its system of standards and measures incentives or adjustments that are designed to encourage service to targeted groups or special populations.

Neither the statute nor its legislative history defines the term "incentives or adjustments." Consequently, the Secretary believes a State should be afforded broad authority to develop incentives or adjustments appropriate to its needs and circumstances. However, this might include establishing different standards and measures for these groups or populations.

Changes: None.

Comments: One commenter expressed the view that the provision in §403.202(b) that a State board, in developing the system of standards and measures, must consider, and provide for consistency with, standards and measures developed under JTPA and JOBS, to the extent appropriate, exceeds the intent of the Act. The commenter offered no elaboration. Some commenters objected to the provision, on the ground that the Act requires the State board only to consider the standards and measures of JTPA and JOBS, not to attempt consistency with them. These commenters pointed out that JTPA and JOBS have different goals and objectives than the Act.

Discussion: The Secretary does not agree that requiring a State board to take into consideration, and to provide for consistency with, the standards and measures under JTPA and JOBS, to the extent appropriate, exceeds the intent of section 115(c) of the Act. Section 403.202(b) does not require standards identical to JOBS and JTPA. Rather, §403.202(b) reflects the concern underlying section 115(c) of the Act, that the State board should not duplicate the effort of other Federal agencies in developing standards and measures under JTPA and JOBS, and that, to the extent the State board determines it is appropriate, the standards and measures developed under the Act will be consistent with standards and measures developed under JTPA and JOBS.

Changes: None.

Comments: Some commenters expressed the view that the regulations should establish a connection between §403.202, which requires a State board to develop standards and measures, and §403.191(c) and (d), which requires a recipient, as part of its annual evaluation, to identify and adopt strategies to overcome barriers resulting in lower rates of access to, or success in, vocational education for members of special populations; to evaluate the progress of members of special populations; and to evaluate the recipient's progress in providing students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. The commenters felt that the regulations should be redrafted to require a State board to develop standards and measures that address the requirements of §403.191(c) and (d).

Discussion: The requirements in §403.191(c) and (d) implement sections 117(a)(1) and (2) of the Act, which provide that it is the recipient's responsibility, not the State board's, to include these factors in its evaluation in addition to using the State board's system of standards and measures. Section 115(a) of the Act requires only that the State board include in its system two measures, and §403.202 preserves that flexibility for the State board.

Changes: None.

Comments: Some commenters stated that the measures developed under §403.202 must be comprehensive and broad, while the standards could be set low, initially, and raised as progress is made. These commenters also expressed the view that the regulations should emphasize the requirement that measures and standards must be accurate, valid and unbiased.

Discussion: The Secretary agrees that measures developed under §§403.201 and 403.202 should be comprehensive, but does not believe the regulations need to contain additional emphasis on this point. Nor does the Secretary believe it is necessary to revise the regulations to provide that standards and measures must be accurate, valid, and unbiased. These requirements are implicit in the provision that requires a State to develop a system of standards and measures.

Changes: None.

Comments: One commenter requested that the Secretary clarify what would be an acceptable level of gain under the standards set by the State board pursuant to §403.202. The commenter also requested guidance on whether a recipient must use pre- and post-testing in assessing progress under the standards and measures, and whether a recipient could simply test random samples of students rather than testing every student. The commenter expressed uncertainty about including in the evaluation students enrolled in consumer and homemaking education, technology education, and career exploration programs because these programs are not occupational in nature, and students who failed to complete a full program of vocational education.

Discussion: Section 115(a) of the Act clearly reserves to the State board the flexibility to determine appropriate standards under the statewide system of standards and measures. The Secretary believes that the advisability of using pre- and post-testing, and which students to include in the testing, is likewise best reserved to the judgment of the State board and its recipients. Regardless of whether a recipient uses pre- and post-testing, a recipient may rely on representative samples in conducting the evaluation required in §403.191(a)(1). With respect to what must be included in the evaluation, §403.191 has been changed to provide that a recipient of funds under Title II, Part C of the Act must evaluate only its projects, services, and activities assisted under the basic or special programs listed in §§403.60 and 403.130, unless the State board determines that, pursuant to revised §403.201(a)(3), a broader evaluation is required.

Changes: None.

Comments: One commenter expressed the view that the relevance of programs to the labor market should be a central element of the evaluation of a recipient's program. The commenter believed that the evaluation provision demonstrated an excessive concern with programmatic elements rather than with employer satisfaction.

Discussion: The Secretary notes that §403.202(a)(2)(ii) provides that a State board may choose to measure "[j]ob or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared ...." In addition, §403.202(a)(2)(iv) provides that a State board may include, as a measure, placement in employment. Representatives of business also advise the State board on the selection of the members of the committee of practitioners, with whom the State board consults in developing the standards and measures. The Secretary believes that these provisions are adequate to ensure that employer satisfaction is an element in the local evaluation, to the extent the State board deems appropriate.

Changes: None.

State and local improvement plan (§403.204(a))

Comments: Some commenters proposed that §403.204 define "sufficient progress" in meeting the standards and measures under the local improvement plan to mean enough progress in one year that, if the same rate were maintained in subsequent years, the students would master the core competencies by completion of the program. The commenters also suggested that §403.204 clarify that the State and recipient must develop the joint plan for the year after the year in which the local program does not show sufficient progress, and not two years after the program does not show improvement. The commenters felt that §403.204 should clarify that the requirement that the State board and the recipient must work with teachers, parents, and students to develop a joint plan for improvement must enable these groups to participate meaningfully in the development of the plan.

Discussion: The Secretary does not agree that §403.204 needs clarification on the points suggested by the commenters. Acceptable progress may vary, depending on the nature of the deficiencies that prompted the local improvement plan, and the resources available to the recipient to address the deficiencies. The State board, in consultation with the recipient, should have the latitude to determine what constitutes acceptable progress under a local improvement plan.

Also, in accordance with section 117(c) of the Act, §403.204 properly provides that a recipient has one year in which to show improvement under the local improvement plan developed under §403.192. Only after this year may the State board require the recipient to enter into a joint improvement plan under §403.204. Finally, the Secretary believes that the requirement that the State board and recipient provide for effective participation by parents, teachers and students in developing the joint plan is implicit in §403.204 and does not agree that elaboration on this point is necessary.

Changes: None.

Appendix A to Part 403 — Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Comments: Some commenters requested that the illustration of providing full participation under §403.111(a) be amended to indicate that an LEA could use funds from sources other than §403.112 to provide supplementary services to special populations students.

Discussion: The illustration provides only one example of the manner in which an eligible recipient can provide full participation for a special populations student. It is not intended to rule out any other ways of providing full participation, nor is it intended to indicate the source of funds to be used. Moreover, §403.190(a)(1)(i)(B) expressly requires an eligible recipient applying for funds under §403.112, 403.113, or 403.116 to describe how it will use those funds or funds from other sources to improve its program with regard to each requirement and activity described in §403.111(c) and (d), including supplementary services designed to meet the needs of special populations. Thus, the Secretary does not believe that further clarification is necessary.

Changes: None.

Comments: Some commenters believed that Example 1 under the illustrations of providing equitable participation under §403.111(c)(3) is a bad example because it provided an extremely superficial method for informing parents and students about program options and providing them with an opportunity and means to make an informed and reasoned decision when making a critical career choice.

Discussion: The Secretary believes that the example illustrates well that one way to provide equitable participation for the students in an LEA is to have an area vocational education school that will receive the LEA's allocation under the Act provide information and an opportunity for enrollment directly to the students and their parents. The example does not state that this is the only method of providing equitable participation, nor does the Secretary agree that it implies that a one-time meeting is the only service necessary to ensure the equitable participation of these students.

Changes: None.

PART 405 — NATIONAL TECH-PREP EDUCATION PROGRAM

Consulting with employment and training agencies and employment service agencies (§405.20)

Comments: One commenter noted that applications could receive extra points under §405.20(d) if, in addition to other factors, they are developed in consultation with business, industry, and labor unions. The commenter recommended expanding the types of entities with whom applicants should consult to include employment and training agencies and employment service agencies in order to receive the extra points.

Discussion: The Secretary agrees that applicants should consult with as broad a range of entities as possible in developing their applications, but has included in §405.20(d) only the entities specified in section 345(d) of the Act. Section 405.21(h)—Adequacy of resources and commitment—includes a factor for evaluating the use of non-Federal resources to provide project services and activities. The Secretary believes that this factor sufficiently encompasses the types of entities the commenter has suggested be involved with proposed projects.

Changes: None.

Equal access for special populations (§405.21)

Comments: Several commenters suggested amending the selection criteria to give substantial weight to the quality of the applicant's plan for serving individuals who are members of special populations. The commenters did not believe that the selection criteria adequately reflected the requirement of section 344(b)(6) of the Act to provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals.

Discussion: Under section 344(b)(6) of the Act, providing equal access to members of special populations is a threshold requirement that must be met before an application can be considered for funding. Therefore, the Secretary does not agree that providing equal access to members of special populations should be a factor in the evaluation process.

Changes: None.

PART 406 — STATE-ADMINISTERED TECH-PREP EDUCATION PROGRAM

Extending tech-prep education programs to grades lower than the last two years of secondary school (§406.3(b)(2))

Comments: Several commenters were concerned that tech-prep education programs are restricted to sequences of study beginning in the eleventh grade. Because they believed that students need to be adequately prepared for tech-prep education programs prior to their enrollment in these programs, the commenters recommended that projects be allowed to use tech-prep education program funds to identify appropriate academics, restructure curriculum, and provide career counseling and vocational assessment to students enrolled in the tenth grade and lower.

One commenter stated that students' success in tech-prep education programs could be enhanced by exposing students to more academically rigorous courses and applied teaching techniques before they enroll in tech-prep education programs.

Another commenter cautioned that tech-prep education programs will likely attract a higher proportion of females and minorities to these programs and that allowable support services should be made available to students before they make a commitment to the program.

While most commenters did not specify at which grade these services should begin, several urged that tech-prep education programs provide flexibility for using funds beginning in grade nine; another commenter recommended that projects offer services to students as early as the seventh grade.

Discussion: The Secretary agrees that students should receive services to prepare them for entry into tech-prep education programs at the eleventh grade. Section 344(b)(2) of the Act specifies that tech-prep education programs be offered during the two years of secondary school preceding graduation followed by two years of higher education or two or more years in an apprenticeship program. However, with respect to tech-prep education at grades before the 11th grade, section 235(c)(1)(G) of the Act allows funds under Title II, Part C of the Act to be used for tech-prep education programs that fall within the definition of vocational education without regard to the grade level of the participants. Moreover, as discussed in response to comments on §406.3(b)(7), the Secretary has determined that tech-prep education programs must provide preparatory services to all populations, which as defined in §400.4(b) includes outreach, guidance, and counseling services to potential candidates for these programs.

Changes: None.

Clarify the services and activities for individuals who are members of special populations (§406.3(b)(6))

Comments: Several commenters recommended providing guidance concerning the meaning of equal access and services for individuals who are members of special populations by referring to section 118 of the Act.

Discussion: The Secretary agrees that it would be helpful for applicants to know which services members of special populations must receive under section 344(b)(6) of the Act, but does not agree that section 118 of the Act applies to the State-Administered Tech-Prep Education Program. The Secretary believes that the assurances required in section 118 of the Act apply only to the programs under Title III of the Act that the Act requires to be operated in accordance with the State plan.

The applicable standard under the tech-prep education program is to provide members of special populations with an opportunity to enter tech-prep education that is equal to the opportunity afforded to the general student population.

Changes: Section 406.3(b)(6) has been changed to clarify that providing equal access for members of special populations means providing an opportunity for these students to enter tech-prep education that is equal to the opportunity provided to the general student population.

Providing preparatory services in connection with tech-prep education programs (§406.3(b)(7))

Comments: Several commenters urged that projects be allowed to use tech-prep education program funds to provide preparatory services for students enrolled in the tenth and lower grades. The commenters observed that funding for tech-prep education programs is restricted to providing services to students beginning in the eleventh grade and that this restriction prevents programs from providing preparatory services to students before they become enrolled in tech-prep education programs.

Some commenters noted a contradiction in the requirement to provide preparatory services to assist participants in tech-prep education programs contained in section 344(b)(7) of the Act and the definition of "preparatory services" contained in section 521(24) of the Act. One commenter recommended that the definition of "preparatory services" be applied consistently throughout the regulations.

Discussion: The use of the term "preparatory services" in connection with tech-prep programs has created confusion. That term as defined in section 521(24) refers to services for "individuals who are not enrolled in vocational education programs" and includes services that are not applicable to students who are enrolled in vocational education programs, such as outreach and recruitment. Section 344(b)(7) of the Act requires the inclusion of "preparatory services" that will assist all participants enrolled in tech-prep programs. Thus, the Secretary agrees that the requirement to provide preparatory services to all participants under section 344(b)(7) of the Act is inconsistent with the definition of "preparatory services" in section 521(24) of the Act, which includes only services to individuals not enrolled in vocational education. Item 182 of the Conference Report accompanying the Act indicates that the requirement to provide preparatory services to all participants originated in section 212(b)(6) of the Senate amendment as a requirement to provide pre-vocational programs that assist the participants in sections 223 and 242 of the Senate amendment, which included discrete populations such as the economically disadvantaged, criminal offenders, and single parents. (H.R. Rep. No. 660, 101st Cong., 2d Sess. 138 (1990).) The conferees agreed to make a conforming amendment to change "pre-vocational" to "preparatory" and, without explanation, changed "participants in sections 223 and 242" to "all participants." Thus, the Secretary believes that Congress intended to require preparatory services related to tech-prep education for "all populations"—not all participants.

Changes: The language of §406.3(b)(7) has been changed to indicate that preparatory services must be provided under tech-prep education programs for all populations. A conforming change has been made to §405.21(a)(7).

Broadening program scope and definitions (§406.5)

Comments: One commenter recommended providing a measure of flexibility in program definitions in order to enhance program effectiveness and broaden the scope of projects that could be funded under the program. The commenter, however, did not provide specific examples of definitions that might need to be clarified, modified, or expanded to provide for greater flexibility.

Discussion: The Secretary agrees that the program definitions should provide for a degree of flexibility within the requirements and specifications of the Act. Even though the definitions specified for the State-Administered Tech-Prep Education Program are taken almost verbatim from the definitions specified in the Act, the Secretary believes that these definitions provide sufficient flexibility for applicants to propose a variety of tech-prep education programs that will be both effective and wide ranging in scope.

Changes: None.

Bureau-funded schools or tribally controlled community colleges (§406.10(b))

Comments: A commenter noted that the statute provides that the Bureau of Indian Affairs funded schools and tribal colleges are eligible recipients for the tech-prep program. The commenter recommended that a requirement be added to §406.10(b) to ensure equal consideration for all applications from consortia that include secondary schools funded by the Bureau of Indian Affairs or tribally controlled community colleges.

Discussion: While the Secretary does not believe there is a need to modify the language in §406.10(b), the Secretary wishes to emphasize that §§406.30(a)(1) and 406.30(a)(2)(i) make it clear that an institution receiving assistance as a secondary school funded by the Bureau of Indian Affairs and non-profit institutions of higher education, including institutions that receive assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S. 1801 *et seq.*), are eligible to apply to a State for an award.

Changes: None.

Administration of consortia (§406.30)

Comments: Several commenters recommended that a tech-prep education program consortium be administrated only by an accredited vocational education program provider. The commenters observed that this requirement would prevent consulting organizations or service providers from skimming off administrative charges and adding staff by using Federal money to administer other programs.

Discussion: The Secretary agrees that tech-prep education program consortia should be administrated only by accredited vocational education program providers. However, because the Act does not specify that the members of a consortium be accredited, the Secretary believes that the issue of whether the members of a consortium should or must be accredited should be left to the discretion of State boards of vocational education.

Regarding the issue of consulting organizations or other service providers using tech-prep education money for purposes other than those set forth in the

Act, the Secretary notes that only educational agencies, schools, or institutions are eligible to be members of a consortium, as specified in §406.30(a). Although a consortium may contract with a consulting organization or other service provider for certain goods or services, the administration of the tech-prep education program should remain within the members of the consortium. In terms of the use of Federal funds, the Secretary notes that the State boards of vocational education are responsible for ensuring that local recipients meet the requirements of the program.

Changes: None.

Applicability of Part 403

Comments: Several commenters stated that many of the provisions of Part 403, such as State assessment, State plans, and evaluation, are relevant and applicable to the State-Administered Tech-Prep Education Program. The commenters recommended that portions of Part 403 be made applicable to the State-Administered Tech-Prep Education Program to ensure that tech-prep education programs are not developed and implemented in isolation from the processes by which the State makes plans for addressing and improving the overall vocational education programming in the State.

Discussion: The Secretary does not believe that Congress intended the requirements related to the State plan to apply to the State-Administered Tech-Prep Education Program. Unlike other programs authorized by Title III of the Act, States are not required to conduct the tech-prep education program in accordance with the State plan.

Changes: Sections 406.2 and 406.10 have been changed to clarify that the State-Administered Tech-Prep Education Program is not subject to State plan requirements.

PART 407 — SUPPLEMENTARY STATE GRANTS PROGRAM

Applicability of Part 403 (§§407.4 and 407.31)

Comments: Some commenters believed that Part 403, which contains the regulations applicable to the State Vocational and Applied Technology Program, should apply at least in part to the Supplementary State Grants Program because this program was intended to provide funds to supplement the basic grant awarded under Part 403. These commenters recommended that §§407.4 and 407.31 be clarified in this respect. Other commenters objected to the requirement imposed in §407.10(a) that a State include its application for a supplementary State grant in its State plan. These commenters argued that this requirement is too restrictive and recommended that the Secretary establish a separate application process.

Discussion: The Secretary believes that the Supplementary State Grants Program was intended to supplement local vocational education programs—not simply the particular projects, services, and activities assisted under the basic grant awarded under Part 403, as suggested by some commenters. Thus, the Secretary is clarifying that funds awarded under Part 407 must be used only to assist activities designed to improve an LEA's vocational education facilities or program. Consistent with this, the Secretary has clarified that only an LEA providing secondary school services may receive funds under the Supplementary State Grants Program and that the State must distribute any funds allocated to an LEA that operates only elementary programs to one or more local or regional educational agencies based on the number of students each agency received in the previous year from the LEA.

The Secretary does not agree that the Supplementary State Grants Program should be subject to the requirements of Part 403 for a State to include its application for a supplementary State grant in its State plan. On the contrary, the authority for this program, which is contained in Title III, Part F of the Act, does not require that this program be conducted by a State in accordance with its State plan, as do some of the programs authorized in Title III of the Act. Although the funds awarded under the Supplementary State Grants Program are to be used to supplement local vocational education facilities and programs, Title III, Part F clearly specifies the allowable uses of those funds, which are more limited than the allowable uses of the basic grant, as reflected in §407.31. Moreover, section 355 of the Act expressly gives the Secretary the authority to determine the time, manner, and contents of an application under this program. Therefore, after considering these comments and other comments concerning the scope of the local assurances required by §403.190(b), the Secretary is amending §403.130 to clarify that the Supplementary State Grant Program is not a special program subject to the requirements of the State plan. See the discussion of the special programs subject to the State plan requirements in response to a comment on §403.190(b).

Changes: Sections 407.1 and 407.31(b) have been changed to clarify that funds awarded under the Supplementary State Grants Program must be used to assist in improving only vocational education facilities or programs. Section 407.33(b) has been added to clarify that the State may not distribute funds awarded under the Supplementary State Grants Program to an LEA that operates only elementary programs but rather must distribute any funds allocated to an ineligible LEA to one or more local or regional educational agencies based on the number of students each agency received in the previous year from the LEA. Section 403.130(e) has been changed to remove the Supplementary State Grants Program from the list of special programs that are subject to the requirements of the State plan. Conforming changes also have been made to §§403.32(d), 403.131(c), 403.187(b), 407.10(a), 407.22(b) and (c), and 407.31.

PART 408 — COMMUNITY EDUCATION EMPLOYMENT CENTERS PROGRAM

Eligibility requirement — 75 percent predominantly educationally disadvantaged applicant (§408.2(b))

Comments: Several commenters suggested that if, as an eligibility requirement, an applicant must be serving a population that is both predominantly educationally disadvantaged and predominantly economically disadvantaged, then the figure of 75 percent may be too high as a threshold for determining "predominantly educationally disadvantaged." The commenters noted that, although this threshold was satisfactory for economically disadvantaged students, the use of this figure for both predominantly educationally disadvantaged and predominantly economically disadvantaged may penalize an applicant that is doing a good job of boosting the academic achievement of economically disadvantaged students.

Discussion: The Secretary notes that Congress' intent is that the Community Education Employment Centers Program serve those individuals with the greatest educational and economic need. The Secretary further notes that 75 percent has been used previously as a measure of the term "predominantly" under this program, and the Secretary finds this to be a reasonable definition. Moreover, the Secretary finds nothing in the Act to support applying different percentages for determining predominantly educationally disadvantaged and predominantly economically disadvantaged.

Changes: None.

Coordinating with service delivery areas under the JTPA program and other youth employment and training programs (§408.10(f))

Comment: One commenter recommended identifying service delivery areas under the JTPA program and other youth employment and training programs as being among the appropriate public and private community agencies that applicants must provide assurances that they will coordinate with in the operation of community education and employment centers.

Discussion: The Secretary believes it is appropriate for projects funded under this program to coordinate with service delivery areas. However, the Secretary finds the enumeration of the entities listed in §408.10(f) sufficiently broad to include all appropriate parties.

Changes: None.

Incorporate required activities into selection criteria (§408.22)

Comments: Several commenters suggested that the selection criteria did not give sufficient attention to how well applicants address some of the basic program requirements specified in §408.3(a). The requirements the commenters recommended incorporating into the selection criteria are those included in §§408.3(a)(2), 408.3(a)(3), 408.3(a)(4)(iii), 408.3(a)(6), and 408.3(a)(7). The commenters proposed strengthening the language of selection criterion (e)—Demonstration and dissemination—to incorporate a full program of technical assistance and training, which the commenters believed is warranted by the language of §408.3(a)(7). Finally, the commenters asked for assurance that basic program requirements would be considered as application eligibility factors.

Discussion: An applicant must describe how it will comply with the program requirements to which the commenters referred in order for its application to be eligible for review in a competition. Therefore, it is not necessary to consider these requirements again in the selection criteria.

Regarding selection criterion (e), the Secretary agrees that the language of the criterion could be strengthened by including a reference to applicants' plans for providing technical assistance and training to others wishing to replicate project methods and techniques.

Changes: Section 408.22(e)(5) — Demonstration and dissemination — has been changed to include a reference to the provision of technical assistance and training activities.

Promulgating a student code of conduct (§408.32(c)(3))

Comment: Several commenters requested additional guidance regarding the requirement for the development of a student code of conduct in consultation with students and teachers. The commenters recommended clarifying the requirement by incorporating language to indicate that consultation must be organized, systematic, ongoing, informed, and timely in relation to decisions about the development of a student code of conduct.

Discussion: The Secretary expects that this and other administrative requirements will be carried out efficiently and effectively as described by the commenters. However, the Secretary does not believe that the suggested regulatory language is appropriate or necessary.

Changes: None.

Evaluation requirements (§408.34)

Comments: Several commenters recommended adding language to the evaluation requirements regarding student academic and vocational competencies to embrace the broad range of academic and vocational skill areas required for this program. The commenters recommended this change in order to ensure that the evaluation would not be too narrowly focused on particular course-work or skill areas.

Discussion: The Secretary agrees that it would be helpful to coordinate the evaluation requirements with the focus of the academic and vocational skills areas specified in §408.3(a)(4)(i) and (iii)(B).

Changes: Section 408.34(b)(1) has been changed to include a reference to the academic and vocational competencies listed in §408.3(a)(4)(i) and (iii)(B).

PART 409 — VOCATIONAL EDUCATION LIGHTHOUSE SCHOOLS PROGRAM

Developing linkages with employment, training, and social service programs (§§409.3(d) and 409.21(a)(1)(v))

Comments: One commenter recommended adding employment, training, and social service programs as being among the entities with which applicants must develop comprehensive linkages in establishing vocational education lighthouse schools.

Discussion: The Secretary agrees that vocational education lighthouse schools should develop comprehensive linkages with employment, training, and social service programs. The Act, however, only requires applicants to develop comprehensive linkages with local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate. Although comprehensive linkages are not required, selection criterion (g)—Budget and cost effectiveness—does include a factor for measuring an applicant's proposed use of funds available from non-Federal sources such as appropriate employment, training, and education programs to acquire equipment and facilities.

Changes: None.

Education and training needs (§409.3(e))

Comments: Several commenters recommended changing the language in §409.3(e), "education training needs," to "education and training needs" to be consistent with the legislative history of the provision.

Discussion: The Secretary agrees that the language of this section should be consistent with other references to education and training needs.

Changes: Section 409.3(e)(1) has been changed to clarify that education and training are distinct activities. A conforming change has been made to §409.21(a)(2)(i).

Selection criteria — Program factors (§409.21(a))

Comments: Several commenters recommended adding provisions to the selection criterion program factors to include certain activities specified under §409.3(a), including the offering of exceptionally high quality programs for disadvantaged and minority youth and providing special services and modifications necessary to help individual students successfully complete the program.

Discussion: The Secretary agrees that these factors should be included in the selection criteria. However, a review of the pertinent portions of the regulations reveals that they are already addressed adequately.

Changes: None.

Selection criteria — Educational significance (§409.21(b))

Comments: Several commenters recommended substituting language relating to the activities specified in §409.3(a) for the data elements specified for the selection criterion in §409.21(b)(1) and the factors identified in §409.21(b)(2) and (3). The commenters suggested that the proposed data elements could result in focusing on programs that do not have key elements pertinent to the establishment and operation of Lighthouse Schools. Additionally, the commenters urged that more emphasis be placed on new and innovative approaches rather than on basing models on other successful vocational education programs that may or may not have data elements related to the components needed for Lighthouse Schools.

Discussion: The Secretary agrees that the language of the criteria should relate as much as possible to the activities specified for the program. The Secretary notes, however, that the activities specified in §409.3 have, in large part, already been incorporated into selection criterion (a)—Program factors.

Regarding the selection of applications based on new and innovative approaches, the Secretary notes that the use of new and innovative techniques is one of the factors specified for this criterion. Vocational education lighthouse schools, however, also should include components based on successful programs that are supported by the empirical data specified in §409.21(b)(1).

Paragraphs (2) and (3) in §409.21(b) are, by design, intended to encourage applicants to relate the objectives and techniques of vocational education lighthouse schools to nationally significant needs and problems. The Secretary agrees, however, that the language of these factors could be tied more closely to the outcomes of the program identified in criterion (a)— Program factors.

Changes: Sections 409.21(b)(2) and (3) have been changed to clarify that the educational significance of an application will be assessed in terms of the program activities in §409.21(a).

Selection criteria — Evaluation plan (§409.21(d))

Comments: Several commenters recommended relating the expected outcomes of participants under §409.21(d) to the required activities described in §409.3(a).

Discussion: The Secretary agrees that certain of the six required activities in §409.3(a) could and should be related to participant outcomes. Others are not participant-oriented and would not be appropriate to evaluate in terms of participant outcomes.

Changes: Section 409.21(d)(3) has been changed to clarify that an application's evaluation plan will be assessed on the basis of how well the expected outcomes of participants identified in the plan relate to the activities required in §409.3(a), as appropriate.

Selection criteria — Demonstration and dissemination (§409.21(e))

Comments: Several commenters recommended expanding the language of the criterion in §409.21(e) to reflect the specific demonstration and dissemination activities required in §409.3(b) and in the Act.

Discussion: The Secretary agrees that the demonstration and dissemination criterion could incorporate more specifically the required activities in §409.3(b), but believes that successful applicants will have no difficulty in relating the specific activities described in §409.3(b) to the more generic criterion factors stated in §409.21(e).

Changes: None.

Evaluation requirements (§409.30)

Comments: Several commenters recommended clarifying the evaluation requirement in §409.30 to measure student achievement to include increases in student knowledge, experience, basic and higher order skills, and problem solving abilities, as specified in §409.3(a)(1) and (2). The commenters urged this change in order to relate student achievement to the broad range of academic and vocational skill areas required for the program.

Discussion: The Secretary agrees that student achievement should be related to the broad range of academic and vocational skill areas required for the program.

Changes: Section 409.30(c) has been changed to clarify that the areas described in §409.3(a)(1) and (2) are the types that must be included in the evaluation of grant activities.

Incorporating legislative history into regulations

Comments: Several commenters recommended adding to Part 409 a number of factors stated in a Senate proposal for Vocational Education Lighthouse Schools Program. These factors include: (1) assistance of the State educational agency in assisting and co-sponsoring the project; (2) use of other funds to cover core program costs; (3) matching requirement; (4) minimum grant size; (5) location in urban and rural areas; and (6) consultation with others in developing the application.

Discussion: The provisions to which the commenters refer are contained in a Senate version of the legislation which was not enacted into law. However, the intent of several of the factors identified by the commenters is reflected in the selection criteria and additional factors for the program. The selection criteria (g) — Budget and cost effectiveness — and (h) — Adequacy of resources and commitment — provide for evaluating the extent to which non-Federal resources and funds are used to support project activities. Selection criterion (a) — Program factors — provides for an assessment of the involvement of others in planning for and developing the project. The Act does not mandate minimum grant size or a matching requirement. However, the commenters' final concern is addressed by the additional factor specified in §409.22, which should ensure an equitable geographical distribution of projects in urban and rural areas.

Changes: None.

PART 410 — TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS PROGRAM

Evaluating applications (§410.20)

Comments: Several commenters believe that the proposed regulations combine and confuse the Indian Vocational Education Program covered by Part 401 and the Tribally-Controlled Postsecondary Vocational Institutions Program covered by Part 410. Specifically, the commenters pointed out that the Department proposed, in §410.20, to apply only 85 percent of the selection points to the criteria in §410.21. The Secretary proposed to reserve fifteen points that would be allocated at a later date among the selection criteria in §401.21. The commenters think that it would be impossible for an applicant to simultaneously adhere to both sets of award rules and that applicants would be confused as to which of the selection criteria would be applied in the competition. The commenters proposed that the Secretary delete §410.20(b) and (d) from the regulations and apply all of the award points to the selection criteria in §410.21.

Discussion: The Secretary agrees with the commenters that typographical errors in §410.20(b) and (d) make it appear that the two programs were combined and confused. The Secretary intends to evaluate applications using the selection criteria in §410.21. Moreover, the 15 points reserved under §410.20(b) will be distributed among the selection criteria in §410.21 in order to emphasize one or more criteria in a particular competition, if the Secretary deems this necessary. The commenters are right in that §410.20(b), (c), and (d) should each refer to the criteria in §410.21 instead of to the criteria in §401.21.

Changes: Sections §410.20(b), (c), and (d) have been changed to refer to §410.21 instead of §401.21.

Additional factors (§410.22)

Comments: Several commenters were concerned that §410.22(a) and (b) appear to say the Secretary may make awards without regard to the clear statutory directive that the first two awards are intended for the Crownpoint Institute of Technology and United Tribes Technical College.

Discussion: There are no statutory provisions that limit the first two awards to Crownpoint Institute of Technology and United Tribes Technical College. While these two institutions were the only institutions that applied for funds in the first funding cycle, many more institutions may be eligible and may apply for support in future funding cycles.

Changes: None.

Comments: Several commenters believed that the additional factors in §410.22(a) and (b) regarding an equitable distribution of funds among Indian tribes are in conflict with the statute. As support for the argument, the commenters cited section 383(b) of the Act specifying that funds are to be used for "basic support for the education and training of Indian students" and section 384 of the Act which establishes eligibility criteria. The commenters believed that the Department should award grants based on the most highly rated applications when reviewed against the eligibility requirements of §410.2.

Discussion: The Secretary has followed carefully the statutory language in establishing eligibility requirements in §410.2 and believes it is reasonable to reserve, in §410.22(a) and (b), authority to avoid an inequitable distribution of awards among Indian tribes especially should there be an increase in the number of institutions applying for and receiving an award under this program.

The commenters confuse factors for eligibility with factors for competitive selection from among all of the eligible institutions that apply. The Secretary, first, applies the eligibility requirements of §410.2 to all applications for funding. Only those applications meeting all of the eligibility requirements of §410.2 are reviewed against the selection criteria in §410.21 and the equitable distribution factors in §410.22. Applications not meeting any of the eligibility requirements in §410.2 are returned to the applicants on the basis of their ineligibility without being reviewed against the selection criteria. The equitable distribution factors in §410.22

would be used only when the number of institutions applying outstripped the ability of the Federal government to provide awards for all of them.

Changes: None.

Comments: Several commenters urged the Department to define how it intends to carry out §410.22(a) requiring the Secretary to consult, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered. The commenters stated that no consultation has occurred since the enactment of this provision of the Act 15 months ago.

Discussion: The commenters are correct that the Secretary was not able to consult with boards of trustees and tribal governments chartering the institutions applying in the first funding cycle of this program occurred. Section 385 of the Act requires the consultation "to the extent practicable." The desired target date for grant awards established by the Congress for the first award cycle made any such consultation impracticable. The Secretary, of course, intends to comply with the provisions of section 385(c) of the Act in the future. Moreover, the Secretary does not ordinarily regulate the administrative responsibilities of the Department and, therefore, would not regulate the consultation process.

Changes: None.

Comments: Several commenters noted that §410.22(c), which permits the Secretary to consider whether funding a particular applicant duplicates an effort already being made, should be reconsidered and elaborated upon in the light of sections 387(a), (b), and (c) of the Act. The commenters noted that, under these sections of the statute, eligible institutions may seek non-duplicative financial aid from other sources.

Discussion: The Secretary has reviewed §410.22(c) within the context of sections 387(a), (b), and (c) of the Act. The Secretary believes that the statute ensures that the eligible institutions have the freedom to seek non-duplicative funding. The Secretary does not believe that detailed, and possibly restrictive, regulations are needed on this provision.

Changes: None.

PART 412 — NATIONAL NETWORK FOR CURRICULUM COORDINATION IN VOCATIONAL AND TECHNICAL EDUCATION (NETWORK)

Comments: Several commenters suggested adding to §412.3 a provision that the information-gathering and sharing functions of the Network include the Lighthouse School (Part 409) and the Community Education Employment Centers (Part 408). In addition, the commenters thought these programs should be made explicitly eligible for awards under §412.2.

Discussion: The National Network for Curriculum Coordination in Vocational and Technical Education (Network), consisting of six curriculum coordination centers, is a system that disseminates information resulting from research and development activities carried out under the Act to ensure broad availability of information at the State and local levels. This broad access would include sharing information with many organizations and individuals including Lighthouse Schools and Community Education Employment Centers.

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program. Therefore, the Lighthouse Schools and Community Education Employment Centers would be eligible to apply for an award when competitions are conducted. The Secretary does not believe it is necessary to explicitly list the specific agencies that are eligible under §412.2.

Changes: None.

PART 413 — NATIONAL CENTER OR CENTERS FOR RESEARCH IN VOCATIONAL EDUCATION

Types of activities (§413.3)

Comments: Several commenters urged deletion of the phrase, "or cooperative agreement," from §413.3 as being outside the scope of the Act since the Act gives the Secretary authority only to award a grant or grants. One commenter pointed out that a grant is the instrument that has been used with past and current Centers; hence, a precedent has been established. Another commenter stated that although a cooperative agreement is a form of a grant, for those who are responsible for the establishment and implementation of a national research program, stability of mission over the life of the grant is important.

Discussion: The Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224) authorizes the Department to use cooperative agreements in lieu of grants when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity. The Secretary makes a determination of when a cooperative agreement is a more appropriate instrument for the use of funds on a case-by-case basis.

Changes: None.

Comments: Several commenters requested that the research and development activities listed in §413.3(a) be modified to include language specifically addressing career guidance and counseling.

Discussion: Because of section 404(b) of the Act does not designate specific disciplines, it would be inappropriate for the Secretary to do so by regulation. The Secretary believes that the regulations provide the National Center with sufficient guidance to select from a range of disciplines that would be appropriate in developing programs to accomplish the purposes of the Act.

Changes: None.

Comments: One commenter stated that section 404(b)(2)(L) of the Act which reads "upon negotiation with the Center, and if funds are provided pursuant to subsection (d), such other topics as the Secretary may designate" has been omitted from the draft regulations. The commenter pointed out that the flexibility provided by the omitted activity is necessary for the Center to respond to emergent issues.

Discussion: The statutory authority established by section 404(b)(2)(L) of the Act is repeated in §413.3(a)(1)(iii) of the regulations. An identical provision for dissemination and training activities is repeated in §413.3(b)(1)(iv) of the regulations. Also, the Secretary interprets §413.30(b) of the regulations as providing an additional opportunity for the National Center to respond to emergent needs.

Changes: None.

Separate competitions (§413.20)

Comments: Several commenters stated that holding two separate competitions for the National Center or Centers would appear to be awkward and extremely time-consuming and would appear to give preference to splitting the functions of the research center into two centers rather than giving preference to maintaining one comprehensive center as it now exists and as is clearly preferred by Congress. The commenters stated that it was the intent of Congress to have all applicants submit three applications simultaneously: one demonstrating the applicant's capacity to create an applied research and development center; one demonstrating the applicant's capacity to create a dissemination and training center; and one demonstrating the applicant's capacity to carry out both functions. The commenters suggested that, in order to be consistent with legislative intent, the Secretary should first review the applications that propose to perform both sets of activities. If none of those applications demonstrate the applicant's capability of carrying out both sets of activities, then and only then should separate applications be considered. The commenters also believed that awarding five preference points for each competition could result in the two competitions being won by different institutions even in the event that there is at least one institution capable of carrying out both functions. The commenters further expressed the opinion that only allowing five preference points provides inadequate competitive advantage to those applicants that are able to demonstrate their capacity to effectively carry out both functions.

Discussion: The Secretary agrees that, in section 404(a)(5) of the Act, Congress expressed its preference that a single center be funded for the purpose of carrying out both the research and development and the dissemination and training activities referenced in section 404(a) of the Act, if a single institution or consortium demonstrated its ability to carry out both of the activities effectively. The Secretary also agrees that, as expressed in section 404(a)(5) of the Act, Congress intended the funding of two separate centers to occur only in the event that no single institution or consortium of institutions could demonstrate the ability to carry out both functions effectively. However, the Secretary does not agree with the commenters' suggestion that applicants should be required to submit three applications, two for carrying out the two program activities separately and one for carrying out both activities together. In the view of the Secretary, this proposal would impose an unnecessary burden upon applicants by requiring them to provide voluminous duplicative material that would serve little, if any, function in assisting the Secretary to evaluate either the activities proposed by an applicant or an applicant's ability to carry out both program activities effectively. In addition, the Secretary considers the Act's reference to an applicant's ability to carry out both activities "effectively" as authorizing him to make a single award only if he has determined that the applicant will use the funds awarded in accordance with the purposes of section 404 of the Act. Finally, the Secretary continues to believe that the most equitable and efficient means by which he can determine the ability of each applicant institution or consortium of institutions to carry out both program activities effectively, is to hold the two competitions provided for in §413.20 of the NPRM and to review and evaluate each application according to the criteria in §§413.21 and 413.22.

However, in response to the comments on the program competition as set forth in the NPRM as well as in response to the commenters' opinion that a five-point preference fails to provide sufficient consideration to an institution or consortium that is able to carry out both activities effectively, the Secretary has revised §413.20. Under §413.20, the Secretary will review each application submitted, evaluate and score each application according to the applicable criteria, and determine whether an applicant submitting applications to carry out both program activities under section 404(a) of the Act has demonstrated its ability to do so effectively. After the Secretary has reviewed, evaluated, and scored each application, each applicant that has submitted two applications and has earned a score of 80 points or higher on each of its two applications, will be deemed by the Secretary to have demonstrated the ability to carry out both activities effectively and will be placed in a pool with any other applicant that has earned a score of 80 points or higher on each of its two applications. The applicant scoring the highest combined score from among the applicants in the pool will be the recipient of a single grant award for the purpose of carrying out both program activities. If only one applicant can demonstrate the ability to carry both activities effectively, then that applicant will be awarded a single grant. If no applicant can demonstrate the ability to carry out both activities effectively, then, as provided for in section 404(a)(5) of the Act, the Secretary will award separate grants to two institutions, one for each of the activities under section 404(a) of the Act.

The Secretary believes that these revisions to §413.20 are responsive to the commenters' concerns, provide for an equitable and efficient competition that gives a strong preference to funding a single institution or consortium, and ensure that if a single institution or consortium is indeed funded, it will have demonstrated the ability to carry out both program functions effectively and in accordance with the purposes of section 404 of the Act.

Changes: Section 413.20 has been revised to clarify that while the Secretary holds two competitions and judges applications according to the criteria in §§413.21 and 413.22, the Secretary intends to give preference in grant selection to an institution or consortium of institutions that demonstrates the ability to carry out effectively both activities listed in section 404(a) of the Act and in §413.3(a) and (b). Section 413.20(h) of the NPRM, which provided for the assignment of five preference points to certain applications, has been deleted. In lieu of preference points, new paragraphs (h) and (i) have been added to §413.20 to explain the specific process by which the Secretary determines the ability of applicants to carry out both program activities effectively and by which the Secretary gives preference to the selection of a single grant recipient. Finally, a new paragraph (j) has been added to §413.20 to clarify that, in the event that no applicant institution or consortium of institutions demonstrates to the Secretary its ability to carry out both activities effectively, the Secretary makes two grant awards to the applicants scoring the highest in each of the competitions.

Selection criteria (§§413.21 and 413.22)

Comments: Several commenters questioned the allocation of 35 out of 100 points to the selection criterion "Plan of operation" as compared to 20 out of 100 points for "Program factors," arguing that the weight given to these selection criteria does not reflect sufficiently the quality of the research and development activities. The commenters questioned the same allocation of points to dissemination and training activities. The commenters suggested shifting points from "Plan of operation" to "Program factors" for both research and development activities and dissemination and training activities so they would be more equally weighted.

Discussion: The Secretary assigns points to each set of criteria as a means of encouraging applicants to give greater consideration to certain criteria. The Secretary assigned less weight to "Program factors" than to the "Plan of operation" since the kinds of activities to be carried out by the National Center are based upon statutory requirements whereas a plan of operation is not specified in the Act. Moreover, the NPRM contained a technical error in the number of points reserved by the Secretary for distribution among the criteria in §§413.21 and 413.22 in accordance with paragraph (d) of §§413.21 and 413.22. The number of reserved points for each set of criteria is 10 instead of 15, as indicated in proposed §413.20(b).

Changes: Section 413.20(b) has been changed to indicate that the Secretary reserves 10 points to be distributed among the criteria in §§413.21 and 413.22.

Comments: Several commenters expressed concern that the selection criteria were not specific enough to provide a basis on which to judge the quality of both the research and development activities and the dissemination and training activities. The commenters believed that the quality of research and development activities and the dissemination and training activities should be judged by: (1) the highest standards of quantitative research methodology, and (2) previous experience in conducting similar activities. The commenters expressed additional concern that the proposed regulations did not sufficiently focus on the coordination between the research and development activities and the dissemination and training activities. In addition, the commenters suggested that the criteria for selecting key personnel should be based on their competency in all phases of applied social science methodology.

Discussion: The Secretary believes that the issue of quality is adequately addressed under §§413.21(a) and 413.22(a) which stress that each of the required activities, whether research, development, dissemination, or training, should be of high quality and effectiveness. The Secretary points out that one of the selection criteria is vocational education experience in conducting applied research and development or dissemination and training activities, or both, in the field of vocational education. The Secretary further points out that the coordination issue is addressed under the criterion "Coordination activities" which requires that applicants submit an effective plan for the coordination of activities described in §413.3(a) and (b). In the Secretary's view, an effective plan that will ensure coordination of the research and development activities and the dissemination and training activities, whether between two centers, or within one center, is essential.

The Secretary agrees that key personnel should have appropriate professional qualifications in fields related to the proposed activities. The Secretary believes, however, that §413.21(c)(2)(i) provides sufficient guidance in this regard.

Changes: None.

PART 419 — INTERNSHIP FOR GIFTED AND TALENTED VOCATIONAL EDUCATION STUDENT PROGRAM

Vocational student organizations (§419.3))

Comments: One commenter requested that the designation, "vocational student organizations," be added as one of the groups for which gifted and talented students selected under this program might work as interns. The commenter also requested that the designation, "vocational student organizations," be added to the definition of "Sponsor."

Discussion: The groups listed in the §419.3—Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education—are explicit in section 414(d)(2)(a) of the Act. The Secretary considers vocational student organizations to be nationally recognized vocational education associations that can provide quality internship opportunities. However, the Secretary does not believe it is appropriate to list in the regulations the specific nationally recognized organizations that are eligible to provide internships under this program.

Changes: None.

PART 421 — BUSINESS AND EDUCATION STANDARDS PROGRAM

Comparable national organizations (§421.2(d))

Comments: Several commenters stated they did not think that educational associations should be listed in §421.2(d) as an example of a "comparable" national organization to industrial trade organizations, labor groups, or joint apprenticeship committees eligible to receive grants. Another commenter felt neither educational associations, nor private and national research organizations are "comparable national organizations." One commenter suggested that educators should serve as members, as consultants, or as both to these committees, which should be composed of a broad representation of industry representatives. Others felt standards developed by educational associations could be self-serving and impede progress.

Discussion: The Secretary does not agree that educational associations or private national research organizations should be deleted from the list of comparable national organizations. Numerous occupations frequently cut across multiple industries and to choose a specific industry or trade association to represent one of these occupations would not be equitable or productive. There are many national educational professional associations, and private and national research organizations that primarily have membership from these multi-industrial occupational clusters, have ties with the industries or trade groups they represent, or both. Many have expertise in skills standards development and certification, and limiting their participation in the development of national standards would foreclose the use of this valuable expertise.

Changes: None.

Comments: One commenter requested that vocational student organizations be added as one of the groups that are comparable national organizations to industrial trade associations, labor organizations, and national joint apprenticeship committees.

Discussion: The Secretary does not believe that vocational student organizations are comparable national organizations to industrial trade associations, labor organizations, and national joint apprenticeship committees. Thus, student organizations are not included as eligible applicants in §421.2. However, the Secretary recognizes the high potential of vocational student organizations to participate on or provide input into the technical committees charged with the responsibility of developing national standards for competencies in industries and trades.

Changes: None.

Grants to update existing standards (§421.3)

Comments: One commenter questioned whether the Department intends to award grants under the Business and Education Standards Program for initiatives to update existing national standards as well as those to develop new standards and recommended that the rules not be limited to new standards development. This commenter believed that, due to rapid technological changes in many sectors of our economy, standards for competencies in industries and trades must be updated to keep pace with these technological changes. The commenter requested corresponding amendments to §§421.1, 421.3, 421.21(a), and 421.21(b)(1).

Discussion: The Secretary agrees that standards for competencies and trades should be updated periodically and believes that the existing language of the regulations allows for the support of technical committees to update standards. However, like other applications, applications proposing to update standards will be evaluated under the selection criterion related to the extent of the need for the project.

Changes: None.

Selection criteria (§421.21)

Comments: Several commenters suggested that §421.21(a) be changed to add as additional program factors the extent to which an application proposes to develop standards that address—

(a) Strong experience in and understanding of all aspects of the industry the workers will be entering (including planning, finance, management, technical and production skills, underlying principles of technology, labor, community, and health, safety, and environment); and

(b) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of reading, writing, mathematics, science, and social studies) in a technological setting.

The commenters stated that these provisions are needed to ensure that any standards are consistent with the basic thrust of the overall Act, the specific focus for skill standards used in the State assessment required in developing the State plan under the Act, and Congress's concerns for avoiding overly narrow definitions of job specific skills.

Discussion: The Secretary notes that section 416(b)(2)(A) of the Act requires that, at a minimum, standards must relate to major divisions or specialties within the occupations the applicant proposes to study. Each applicant must decide how to identify the skills from all aspects of the industry that are necessary for specific divisions or specialties within the occupation. Similarly, while the Secretary concurs that education programs should provide a broad range of transferable skills, each applicant must decide how to define these concepts and to meet these goals while identifying the specific skill standards needed for specific divisions or specialties within occupations. In order to allow maximum flexibility in addressing these issues, the Secretary chooses not to regulate on these points. Furthermore, the Secretary expects that any standards generated by these grants will be useful to vocational education programs.

Changes: None.

Comments: Several commenters suggested that a new selection criterion be inserted in §421.21 that would specify the composition of the proposed technical committee.

Discussion: Technical committees should be composed of individuals who are knowledgeable about the occupations to be studied and are representative of business, labor, and education. The Secretary believes that the criterion in §421.21(c)(2) adequately specifies the composition of a proposed technical committee.

Changes: None.

Comments: One commenter proposed an addition to the criterion contained in §421.21(g)—Dissemination plan—to include a program to encourage the implementation and use of the standards by training programs.

Discussion: The Secretary agrees with the commenter that a program to assist in the adoption or implementation of the standards once they have been developed would contribute to the overall success of the program.

Changes: Paragraph (4) has been added to §421.21(g) to encourage the adoption and use of the proposed standards by education and training programs.

PART 425 — DEMONSTRATION PROJECT FOR THE INTEGRATION OF VOCATIONAL AND ACADEMIC LEARNING PROGRAM

Populations to be served (§425.3)

Comments: Several commenters suggested that section 420(b)(3) of the Act requires each project to serve individuals who are members of special populations in addition to one or more of the populations specified in section 420(b)(4) of the Act and that the language of §425.3(b) does not meet this requirement.

Discussion: The Secretary does not agree that section 420(b) of the Act imposes requirements applicable to the individual projects supported under this program. On the contrary, section 420(b) requires that the Secretary consider certain factors when selecting applications for funding, in order to ensure that the projects supported under this program together, for example, offer significantly different approaches to integrating curricula. In order to ensure that the Department funds applications that together serve the populations or groups listed in section 420(b)(3) and (4) of the Act, the Secretary requires under §425.3(b) that each project serve at least one of these populations. Then, in selecting applications for funding under §425.22(a)(3), the Secretary funds applications to ensure that the projects supported under this program together serve the populations listed in §425.3(b).

Changes: None.

Inservice training (§425.3)

Comments: One commenter recommended providing inservice training in integrated curricula to academic faculty and to counselors in addition to teachers of vocational education students. The commenter pointed out that, in order to integrate vocational and academic learning, the concepts of "vocational" and "academic" need to be expanded and that traditional boundaries between the two areas must be broken. Noting that both vocational and academic instructors must cross over into the other realm in order for effective integration to occur, and that counselors must also understand curriculum offerings in order to properly advise students, the commenter recommended that projects provide inservice training to all teachers, counselors, and administrators involved in integrated curriculum efforts.

Discussion: The Secretary agrees that in order to integrate vocational and academic learning, projects should provide inservice training for both academic and vocational instructors. The regulations permit both academic and vocational teachers to receive this type of training, provided they are teachers of vocational education students.

Although the Secretary concurs that counselors and teachers of all students could also benefit from inservice training in integrated curricula, the Secretary does not believe that it is appropriate to expand §425.3(a)(2) to include groups that do not serve vocational education students.

Changes: None.

Non-baccalaureate bound secondary students served (§§425.3 and 425.21)

Comment: One commenter recommended modifying §§425.3 and 425.21 in order to expand the student population groups to be served to include general education students in addition to vocational education students at the secondary level. The commenter pointed out that, while the integration of vocational and academic learning programs enhances learning opportunities for vocational students, general education students can gain equally or more from these integrated efforts.

Discussion: Section 420 of the Act limits the types of projects that can be funded under this program to only those that integrate vocational and academic learning. Thus, any student, including a general education student, who is enrolled in these types of projects may be served at any educational level under this program.

Changes: None.

Selection criteria — Program factors (§425.21(a))

Comments: Several commenters suggested that the extent to which each project will serve the populations specified in section 420(b) of the Act should reflect the fact that serving individuals who are members of special populations is mandatory and not optional.

Discussion: As discussed in response to a similar comment related to §425.33, the Secretary does not believe that section 420(b) of the Act imposes requirements on the particular projects funded under this program, but rather it addresses overall the projects to be funded. The Secretary believes that §§425.3 and 425.22(a)(3) fully implement the requirements of section 420(b) of the Act.

Changes: None.

Selection criteria and evaluation requirements (§§425.21(b), 425.21(d), and 425.30)

Comments: Several commenters stated that the selection criteria and other requirements rely too heavily on generic language and should reflect the specific needs relating to academic-vocational integration outlined in the Act.

Discussion: The Secretary agrees that the criteria and other requirements should, as much as possible, relate to the language of the Act. Although selection criteria (b) — Educational significance—and (d) — Evaluation plan—are largely generic for all demonstration programs, both criteria contain references that are specific for the Demonstration Projects for the Integration of Vocational and Academic Learning Program. Additionally, selection criterion (a)—Program factors—includes language specifically tailored to the needs and purposes of this program.

The evaluation requirements for this program are, by intent, generic for all demonstration programs. Those requirements, for the most part, refer to how an applicant would structure a proposed evaluation rather than, for example, the specific indicators that would be used.

Changes: None.

PART 426 — COOPERATIVE DEMONSTRATION PROGRAM

Disadvantaged youths and adults (§§426.1 and 426.3(a)(3))

Comments: Several commenters recommended that projects to assist individuals in preparing for technical and professional health careers should serve disadvantaged adults in addition to disadvantaged youth.

Discussion: Although the Secretary agrees that disadvantaged adults could benefit from such services, the Act authorizes projects only to assist disadvantaged youth in preparing for technical and professional health careers.

Changes: None.

PART 427 — BILINGUAL VOCATIONAL TRAINING PROGRAM

Eligible applicants (§427.2)

Comments: Two commenters expressed the view that the intent of the Bilingual Vocational Training Program and the Bilingual Vocational Instructor Training Program is to improve the capacity of local educational agencies. The commenters, therefore, thought that for-profit agencies should not be eligible for contracts, but should be able to serve only as sub-contractors.

Discussion: Section 441(a)(1) of the Act specifically establishes the eligibility of "private for-profit agencies and organizations" for contracts under the Bilingual Vocational Training Program, and section 441(b)(1) establishes the eligibility of "private for-profit educational institutions" for contracts under the Bilingual Vocational Instructor Training Program.

Changes: None.

Comments: One commenter recommended that agencies that received funding under the Bilingual Vocational Training Program in the past should not be eligible to reapply for funding unless they are expanding to a new occupational area or serving a new linguistic group. In support of this position, the commenter stated that the intent of the Bilingual Vocational Training Program is to develop model programs and disseminate successful practices, not maintain programs that receive no local or State education funds. The commenter further stated that some bilingual vocational training projects have been in operation for 14 years, and, given the small budget for the activity, more institutions could be impacted if long-term commitment to a few successful sites were disallowed.

Discussion: Section 441(a)(1) of the Act establishes the Bilingual Vocational Training Program in order to provide "bilingual vocational education and training for individuals with limited English proficiency to prepare such individuals for jobs in recognized occupations and new and emerging occupations." The Secretary agrees with the commenter that recipients of grants under the Bilingual Vocational Training Program should disseminate and demonstrate their successful practices to others who could benefit from them. The selection criterion in §427.21(g)—Demonstration and dissemination—implements this idea.

The Department's practice under this program has been to limit funding of a project to two years for each competition. However, since the Act provides no basis for ruling current or past recipients of Bilingual Vocational Training Program funds ineligible for subsequent competitions, an eligible entity can compete in any competition regardless of whether it received an earlier grant.

Changes: None.

Types of projects (§427.3)

Comments: One commenter requested the addition, to §427.3 or 427.21, of a requirement similar to that in §428.3(b) for the Bilingual Vocational Instructor Training Program. Specifically, the commenter recommended that applicants for funding under the Bilingual Vocational Training Program be required to have an ongoing vocational education program in the field in which participants will be trained and to have instructors with adequate language capabilities in a language other than English. The commenter noted that the complexity of both curriculum development and the accommodation of a new population of enrollees requires a high level of institutional readiness if a project is to be successful in the two-year time period allowed.

Discussion: The requirement this commenter wishes to add to the regulations for the Bilingual Vocational Training Program is a statutory requirement that applies only to the Bilingual Vocational Instructor Training Program and is specifically authorized by section 441(b)(3) of the Act.

Changes: None.

Selection criteria (§427.21)

Comments: One commenter noted that since the funding for bilingual vocational training is so limited, the Bilingual Vocational Training Program should provide seed money for bilingual vocational training and award points to projects that demonstrate the ability to continue with other sources of funding.

Discussion: Awarding points for an applicant's ability to continue a project with other sources of funding would have the advantage of giving priority to applicants with access to ongoing non-Federal funding sources. It would have the disadvantage of penalizing some community-based groups and organizations that are very skilled with bilingual vocational instruction but that lack eligibility for ongoing State and local education funding sources. The Act makes private nonprofit vocational training institutions and other nonprofit organizations, whether specially created to serve or currently serving individuals who normally use a language other than English, eligible for grants. Thus, the Secretary believes that evaluating applications using the factor suggested by the commenter would have a negative effect on the ability of some eligible entities to compete.

Changes: None.

Selection criteria — Need (§427.21(a))

Comments: One commenter pointed out that proposed paragraphs (2), (3), and (4) of §427.21(a) do not seem to pertain to the need for the project. The commenter suggested that these items be moved to the selection criterion "Program factors."

Discussion: The Secretary agrees with the commenter that proposed §427.21(a)(2), (3), and (4) would be more appropriately grouped with selection criteria other than "Need." The Secretary believes, however, that these factors would be more appropriate to the selection criterion "Plan of operation" than to the selection criterion "Program factors," as has been suggested by the commenter. Moreover, moving the items to the selection criterion "Plan of operation" would promote consistency between the format of Part 427 and the format for other education and training programs in these regulations.

Changes: Paragraphs (2), (3), and (4) of proposed §427.21(a) have been moved to §427.21(b)—Plan of operation.

Comments: One commenter stated that §427.21(a)(1) and (2) (proposed §427.21(a)(1)(i) and (ii)) suggest a distinction between the terms "employment training need" and "labor market need" that may not exist for certain occupational fields. This commenter suggested that the regulations be changed to focus purely on "the employment need to be met," which the commenter believed combines employment training need and labor market need.

Discussion: By "employment training need," the Secretary means the need of limited English proficient individuals for employment training. By "labor market need," the Secretary means the need of employers for more persons trained to meet the current demands of the workplace. The Secretary believes that applicants should address the need for the project from each of these two perspectives.

Changes: Section 427.21(a)(1) has been revised to clarify the meaning of "employment training need."

Comments: One commenter noted that, while bilingual vocational training projects should demonstrate collaboration with the Job Training Partnership Act (JTPA) programs and Job Opportunity Basic Skills (JOBS) programs, the JTPA standards in serving the limited English proficient trainees are vague, and placement standards for the general population are too low to be meaningful for a competitive application. The commenter believes that instead of collaborating with JTPA and JOBS, projects funded under this program should be setting new, higher standards for training the limited English proficient individuals for all agencies in the process.

Discussion: To encourage consistency, the Secretary expects projects to set goals, taking into consideration the standards and measures developed for JOBS, JTPA, and the State-Administered Vocational Education and Applied Technology Education Program. If the standards of other programs are not as high as an applicant would like, the applicant is free to establish higher standards. At the very least, the Secretary expects applicants to set goals high enough to improve the quality of training and the placement of participants.

Changes: None.

Selection criterion — Plan of operation (§427.21(b))

Comments: One commenter noted that the job placement rate can be supported by past records of anticipated job openings, but not by obtaining letters of job commitments from employers. The commenter explained that during this recession, especially in areas of high unemployment, it is difficult, if not impossible, to obtain letters of job commitment from employers. The commenter, therefore, requested that the term "actual employer job commitment" be changed to "employer letters of support."

Discussion: To establish the anticipated placement rate of participants, applicants may choose from among the four sources listed in §427.21(b)(3)(ii) (proposed §427.21(a)(4)(ii)) or may provide information from all sources. This is signaled to the applicant by the fact that the connecting word in the series of four is "or." The Secretary understands that some applicants may have a greater likelihood of placing participants than others depending on the economic conditions in the area. The Secretary wishes applicants to provide the strongest evidence they can that the participants in the project will be provided job placement in the occupation for which they are to be trained.

Changes: None.

Selection criteria — Demonstration and dissemination (§427.21(g))

Comments: One commenter thought that the specificity of §427.21(g)—Demonstration and dissemination—is very constricting. To encourage demonstration and dissemination plans that are more project-specific, the commenter suggested deleting §427.21(g)(1) through (5).

Another commenter opposed the provisions in §427.21(g)(2), basing the opposition on several factors, among them, that the Bilingual Vocational Training Program was intended for the direct delivery of training and services; that providing the required demonstration and dissemination activities would result in a reduction in the human and financial resources that projects now devote exclusively to the primary missions of training and placement; and that accomplishing the demonstration and dissemination activities would require hiring a different and higher salaried staff capable of producing professional papers for national conferences and meetings.

Finally, the commenter opposed this selection criterion because the commenter did not believe that covering the costs of travel, mailing, duplicating, and rental of audio-video equipment at conference sites was anticipated in the legal requirements for the use of funds described in §427.3. This commenter believed the regulations should limit the requirements for demonstration and dissemination activities to the local level and to community-based organizations rather than encourage activities at the State or national levels.

Discussion: Eliminating §427.21(g)(1) through (5) would have the advantage of permitting applicants to devise their demonstration and dissemination plans as narrowly as they chose in relation to the specific language groups being served, specific types of institutions providing bilingual vocational training programs, and geographic boundaries within which these services would be provided. It would have the disadvantage of failing to convey the Secretary's expectations that the results of projects are to be broadly disseminated and demonstrated and made available without regard to types of institutions or geographic boundaries, and that the dissemination and demonstration activities are to be evaluated. The Secretary wishes these factors to influence the applicant's program design, management plan, and budget. The Secretary believes that applicants have been given broad latitude in shaping and describing the project-specific types of materials that will be disseminated, and the Secretary encourages applicants' creativity in shaping the methods and procedures that each applicant will use for helping others replicate successful practices.

The Secretary believes that, when a bilingual vocational training model is successfully disseminated and demonstrated, other vocational education and training programs across the country serving the limited English proficient can also increase their level of success. Demonstration and dissemination activities can multiply the effect of this program by providing information to service providers that have broad access to other sources of funding, such as the State-Administered Vocational and Applied Technology Education Program.

Changes: None.

Duration of projects

Comments: One commenter believed that projects under the Bilingual Training Program should be funded for a three-year period with a yearly non-competitive review to ensure attainment of stated objectives and placement rate. This commenter believed that a three-year funding period is justified by the new dissemination and impact objectives that the Secretary has built into the regulations.

Discussion: The Secretary announces in the *Federal Register* the expected duration of projects in any notice requesting applications. Implementing the commenter's suggestion would not require a change in these regulations.

Changes: None.

PART 428 — BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Purpose of program (§428.1)

Comments: Several commenters pointed out that §428.1 excluded secondary vocational instructors from participation in the Bilingual Vocational Instructor Training Program. These commenters considered it essential that the regulations be changed to permit the participation of secondary vocational instructors. Other commenters expressed support for restricting the use of training funds to individuals instructing out-of-school youth and adults.

Discussion: As proposed, §428.1 would have limited training under the Bilingual Vocational Instructor Training Program to personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. The proposed regulations were intended to reinforce the traditional link between the Bilingual Vocational Instructor Training Program and the Bilingual Vocational Training Program that is limited by law to training "limited English proficient out-of-school youth and adults."

While limiting the Bilingual Vocational Instructor Training Program in this way has the advantage of reinforcing and strengthening the Bilingual Vocational Training Program, it has the disadvantage of slowing the pace with which secondary vocational education institutions adopt the highly successful bilingual vocational training models developed under the Bilingual Vocational Instructor Training Program. It also has the disadvantage of giving local agencies and institutions less flexibility to use Federal funds to address locally-defined educational needs.

Changes: Sections 428.1, 428.3(a)(1), 428.10(h), 428.21(a)(2), 428.21(b)(1)(i) and (iii), and 428.21(b)(2) have been revised to authorize the training of secondary vocational instructors in training projects supported under the Bilingual Vocational Instructor Training Program.

Types of projects (§428.3(b))

Comments: One commenter observed that the requirement for an "ongoing vocational education program in the field in which participants will be trained" is not relevant to inservice programs and should only apply to preservice programs that train vocational teachers or aides. The commenter stated that, in the case of inservice training, trainees will already be skilled as either vocational or English language instructors or counselors. The commenter suggested that §428.3(b) be revised so that it applies only to preservice training programs and requires institutions providing inservice training programs to have an ongoing program or expertise in bilingual vocational, bilingual/multicultural, or adult ESL teacher training.

Discussion: Section 441(b)(3) of the Act, on which §428.3(b) is based, does not differentiate between preservice and inservice training programs in requiring the applicant to have "an ongoing vocational training program in the field in which participants will be trained and [to] provide instructors with adequate language capabilities in the language other than English to be used in the program."

Changes: None.

Selection criteria — Evaluation plan (§428.21(f)(3))

Comments: Several commenters interpreted §428.21(f)(3) as requiring participating institutions to provide data on completion and after-training work commitments of students. The commenters recommended that this selection criterion be changed to read: "provide data on performance and performance standards" in order to accommodate secondary school students.

Discussion: The Secretary intends that agencies and institutions receiving grants to train bilingual vocational training instructors will provide data on the "after-training work commitments" of those instructors, not the students of the instructors. The Secretary hopes that the instructors, of both secondary school students and out-of-school youth and adults, will report that their after-training work commitments include the direct vocational training of limited English proficient individuals, the training of other instructors for this purpose, or both. Changing the selection criterion would have the effect of placing more emphasis on the quality of "inputs" to the training program and less emphasis on the program's "outcomes." The Secretary prefers the current balance between these two factors.

Changes: None.

Comments: One commenter stated that the selection criterion "evaluation plan" should apply only to preservice training programs. The commenter expressed the view that trainees in inservice training programs are already employed and that, therefore, after-training work commitments would not change. The commenter also believed that since few inservice programs involve courses, completion data do not apply.

Discussion: The Secretary does not agree with the commenter that all individuals enrolled in inservice training programs may be presumed to be already employed in bilingual vocational training. The Secretary believes that some participants in inservice training programs may be employed in vocational education or counseling programs that presume the enrollees or clients already have an English language capability. By the regulation as written, the Secretary wishes to know whether these enrollees will be making a transition into bilingual vocational training programs.

The Secretary also disagrees with the commenter that since few inservice programs involve courses, completion data do not apply. The Secretary recognizes that preservice and inservice training programs differ. Therefore, §428.21(f)(4) provides flexibility for applicants to identify expected learning and skills outcomes for participants and how those outcomes will be measured. The Secretary expects inservice projects to report on completions in terms of the number of enrollees who acquired the learning and skills expected rather than on courses completed.

Changes: None.

General

Selection criteria — Evaluation plan and evaluation requirements (§§405.21(d), 405.30, 425.21(d), and 425.30)

Comments: One commenter noted that the technical expertise and time required for a valid evaluation requires project research and evaluation staff working in concert with project implementation staff across the entire funding period. The commenter requested that the Secretary place an emphasis on fully funding costs related to research and evaluation personnel and materials as these costs are not only "reasonable and necessary" but critical for meeting increased accountability.

Discussion: The Secretary believes that it is prudent and fair to communicate expectations for rigorous evaluation designs and program accountability measures to potential applicants before they write applications for funding. The Secretary expects that advance knowledge of the additional requirements will influence not only how applicants plan and manage their projects, but how they propose to budget grant funds in their applications.

Changes: None.

Evaluation requirements (§§405.30 and 425.30)

Comment: One commenter noted that evaluative data are required for demonstration programs (including those covered by Parts 405 and 425) that include "information regarding student achievement, completion, and placement rates." The commenter expressed a concern that it is difficult, particularly in the early stages of a project, to delineate clearly a "cause and effect" relationship. The commenter, therefore, recommended that other data, including product availability and use, attendance rates, suspension rates, and attitudinal changes, also be taken into account.

Discussion: The Secretary recognizes the difficulty of establishing a "cause and effect" relationship during the early stages of a project. However, the requirement to base the evaluation on student achievement, completion, and placement rates is to be met over the course of the project, not just during the early stages of a project. Although projects are free to gather evaluative data other than those specified in the regulations, the Secretary expects a project's evaluative data to include the information specified in §§405.30 and 425.30.

Changes: None.

Note: This appendix is to be published in the *Federal Register* with the final regulations, but it is not to be codified in the Code of Federal Regulations.

The information collection requirements contained in this appendix will be submitted to the Office of Management and Budget for approval at which time the public will have an opportunity to comment on them pursuant to the Paperwork Reduction Act.

Reporting Requirements

APPENDIX B

Reporting Requirements

Recipients of grants and cooperative agreements will be required to provide the following information in accordance with 34 CFR 400.10:

(a) Each recipient of an award under the National Tech-Prep Education Program (34 CFR Part 405), Community Education Employment Centers Program (34 CFR Part 408), Vocational Education Lighthouse Schools Program (34 CFR Part 409), Demonstration Centers for the Training of Dislocated Workers Program (34 CFR Part 415), Vocational Education Dropout Prevention Program (34 CFR Part 423), Model Centers of Regional Training for Skilled Trades Program (34 CFR Part 424), Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR Part 425), and Cooperative Demonstration Programs (34 CFR Part 426) shall —

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing project activities for the reporting period; and

(2) Include as appendices to the annual performance report, as appropriate —

(i) Quantitative analyses of data and information regarding student achievement, completion, and placement rates;

(ii) Quantitative analyses of data and information regarding project and product spread and transportability as defined in 34 CFR 400.4(b);

(iii) Copies of "awareness" level materials being distributed about the project;

(iv) Copies of materials related to training used to help others replicate project activities;

(v) Copies of instructional, classroom, or curriculum materials that can be submitted to appropriate dissemination networks such as the National Network for Curriculum Coordination in Vocational and Technical Education and the Clearinghouse on Adult, Career, and Vocational Education of the Educational Resources Information Center;

(vi) A directory of individuals to whom training or technical assistance has been provided to replicate project activities; and

(vii) Demographic and evaluation data from sites where project activities have been replicated.

(b) Each recipient of an award under the Community Education Employment Centers Program (34 CFR Part 408) shall also include as an appendix to the annual and final performance reports information documenting activities required in 34 CFR 408.34.

(c) Each recipient of an award under the Indian Vocational Education Program (34 CFR Part 401), Native Hawaiian Vocational Education Program (34 CFR Part 402), Educational Program for Federal Correctional Institutions (34 CFR Part 422), and Bilingual Vocational Training Program (34 CFR Part 427) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate those barriers; and

(2) Submit to the Secretary a semi-annual statistical report covering quantitative analyses of the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the program.

(d) Each recipient of an award under the Indian Vocational Education Program (34 CFR Part 401) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix, quantitative analyses of data and information regarding —

(1) Student enrollment, completion, and placement rates for the most recently completed training cycle(s), by sex and by occupations for which training is being provided; and

(2) Project referrals to social services and related services for participant employment readiness.

(e) Each recipient of an award under the Native Hawaiian Vocational Education Program (34 CFR Part 402) shall—

(1) Include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of student enrollment, completion, and placement for the most recently completed training cycle(s), by sex and socio-economic status for each occupation for which training is being provided; and

(2) Submit to the Secretary an annual evaluation report that must include descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on—

(i) The academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Participant enrollment, completion, and placement by sex, and socio-economic status for each occupation for which training has been provided.

(f) Each recipient of an award under the Educational Program for Federal Correctional Institutions (34 CFR Part 422) shall include in the semi-annual performance report described in paragraph (c)(1) of this appendix quantitative analyses of data and information regarding—

(1) Student enrollment and completion rates by sex, ethnic or racial group, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Project referrals to pre and post release services for employment enhancement.

(g) Each recipient of an award under the Bilingual Vocational Training Program (34 CFR Part 427) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of—

(1) Student enrollments, completions, and placements for the most recently completed training cycle by sex, ethnic or racial group, socioeconomic status, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Data and information regarding activities to enhance project operations such as coordination activities, training or upgrading of personnel, and the provision of support services.

(h) Each recipient of an award under the Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR Part 410) shall—

(1) Submit the following to the Secretary:

(i) On an annual basis, an accurate and detailed accounting of its operating and maintenance expenses, and other information concerning costs as the Secretary may require.

(ii) Information in the detail as the Secretary may require to prepare a budget needs estimate to support each institution's subsequent year of operation including updated information on employment needs, economic development needs, and population training needs.

(iii) Any information the Secretary may require to determine the feasibility of awarding additional grants to pay training equipment costs necessary for implementing training programs.

(2) Participate in the study of training and housing needs authorized by section 389(a) of the Act, and the long-term study of facilities authorized by section 389(b) of the Act, including providing information on—

(i) Training equipment needs;

(ii) Housing needs of families whose heads of household are students and whose dependents have no alternative source of support while those heads of household are students; and

(iii) A five year projection of training facilities, equipment, and housing needs, projected service population, and employment and economic development projections.

(i) Each recipient of an award under the National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR Part 412) shall submit to the Secretary—

(1) Semi-annual progress reports summarizing project activities for the reporting period;

(2) Semi-annual financial reports summarizing project spending for the reporting period; and

(3) An annual impact report of the curriculum coordination center's activities. The report must highlight the CCC's services and the program improvement practices resulting from these services. This report is due on December 31 of each year of the award.

(j) Each recipient of an award under the National Center or Centers for Research in Vocational Education (34 CFR Part 413) shall submit to the Secretary the following:

(1) Monthly exception reports that describe—

(i) Any problems, delays, or adverse conditions that materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments that will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(2) Semi-annual performance reports, unless the Secretary requires more frequent reporting, that describe the progress, problems, and future plans for each significant activity of the National Center within 30 days of the end of each six months.

(3) Quarterly financial status reports within 30 days of the end of each quarter. The annual financial status report may be submitted in place of the quarterly financial status report for the fourth quarter of each year.

(4) Ten copies of all substantive reports and products produced.

(k) Each recipient of an award under the Vocational Education Training and Study Grants Program (34 CFR Part 416) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing project activities for the reporting period and, if applicable, actions taken by the grantee to address any significant barriers impeding progress; and

(2) Append to the annual performance report an evaluation report that includes both statistical tables and narrative responding to the key evaluation questions in 34 CFR 416.21(f).

(l) Each institution receiving an award under the Vocational Education Leadership Development Awards Program (34 CFR Part 417) shall—

(1) Provide to the Secretary, prior to disbursing awards, a certification from an appropriate official at the institution stating whether each proposed recipient of a leadership development award qualifies for the award based on the requirements in 34 CFR 417.34(a);

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of awards;

(3) Keep records verifying that recipients of leadership development awards—

(i) Meet the requirements in 34 CFR 417.40; and

(ii) Receive an award for no more than three years;

(4) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them; and

(5) Submit to the Secretary a semi-annual statistical report covering quantitative analyses, by sex and racial or ethnic groups, of—

(i) Level and duration of learner participation and degree of progress;

(ii) Level of graduate study;

(iii) Institution and program in which enrolled;

(iv) The categories of personnel named in 34 CFR 417.1; and

(v) State from which the participant was selected.

(m) Each institution of higher education participating under the Vocational Educator Training Fellowship Program (34 CFR Part 418) shall—

(1) Provide to the Secretary, prior to disbursing funds to a fellow, a certification from an appropriate official at the institution stating whether each proposed recipient of a fellowship meets the requirements in 34 CFR 418.41;

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of fellowship payments; and

(3) Keep records verifying that each fellow—

(i) Meets the requirements in 34 CFR 418.2; and

(ii) Receives a fellowship for no more than two years.

(n) Each agency or organization sponsoring an intern under the Internships for Gifted and Talented Vocational Education Student Program (34 CFR Part 419) shall submit to the Secretary two copies of a mid-term and final report summarizing the intern's activities and progress achieved in meeting the goals of the internship.

(o) Each recipient of an award under the Bilingual Vocational Instructor Training Program (34 CFR Part 428) shall submit to the Secretary—

(1) A semi-annual performance report, unless the Secretary requires more frequent reporting, summarizing significant and project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them;

(2) A semi-annual statistical report of learner participation in instructor training in terms of enrollment, completion, and after-training work commitments of participants by sex and racial or ethnic group and, where appropriate, by level and kinds of language proficiency; and

(3) An annual report on the results of the evaluation to answer the key questions raised in 34 CFR 428.21(f).

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